W00A

047

IN THE SUPREME COURT OF FLORIDA

CASE NO. 76,054

STATE OF FLORIDA,

Petitioner,

vs.

WILLIAM JOHNSON,

Respondent.

****

SUPPLEMENTAL BRIEF OF PETITIONER

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida

DOUGLAS J. GLAID
Assistant Attorney General
Florida Bar #249475
111 Georgia Avenue, Suite 204
West Palm Beach, Florida 33401
Telephone: (407) 837-5062

Counsel for Petitioner

TABLE OF CONTENTS

TABLE OF CITATIONS

PRELIMINARY STATEMENT

Petitioner, the State of Florida, was the prosecution in the trial court and the Appellee in the Fourth District Court of Appeal. Respondent, William Johnson, was the defendant in the trial court and the Appellant in the District Court of Appeal.

In this brief, the parties will be referred to as they appear before this Honorable Court.

The symbol "R" refers to the record on appeal. Unless otherwise indicated, all emphasis has been supplied by Petitioner.

STATEMENT OF THE CASE AND FACTS

Petitioner accepts as accurate the Statement of the Case and Facts contained in Respondent's supplemental brief to the extent that it is non-argumentative and relevant to the issue on appeal, subject to the following additions:

At the trial level, Respondent did not object to Officer Moore's comment that the location of Respondent's arrest was "well known for high school narcotics, prostitution to robberies, and burglaries." (R 99). Additionally, Respondent never moved for a mistrial based upon this comment.

SUMMARY OF ARGUMENT

Assuming arguendo the impropriety of the trial court's admission of Officer Moore's testimony concerning the criminal nature of Respondent's arrest location, the admission of this evidence was, at most, harmless error. Officer Moore's mere general testimony concerning narcotics investigations and his experience therein, including his unobjected description of the arrest location as a high-crime area, was relevant to show the entire context out of which Respondent's criminal conduct arose. That Respondent was shown to be selling cocaine was unavoidable given the specific nature of the crime charged, i.e., tampering with evidence during an investigation. Moreover, the evidence of Respondent's guilt is abundantly clear from the record. Thus, the admission of this testimony did not result in a "miscarriage of justice" necessary to warrant reversal.

ARGUMENT

POINT I

THE IDENTIFICATION OF THE LOCATION OF THE ARREST AS A HIGH CRIME AREA WAS, AT MOST, HARMLESS ERROR.

Although Respondent interposed numerous objections to the prosecutor's general informative questions concerning Officer Moore's experience in and description of narcotics investigations, Respondent specifically did not object to the question or response wherein it was adduced that the location of Respondent's arrest was "well known for high school narcotics, prostitution to robberies, and burglaries." (R 99). Consequently, Petitioner submits that Respondent waived his right to seek appellate review of the propriety of the admission of Officer Moore's trial testimony in this regard. Indeed, § 90.104, Fla. Stat. (1989) expressly requires that a party timely object to rulings admitting evidence to preserve the right to subsequent review, presumably so that the trial judge will not infer the silence of a previously complaining party as acquiescence to his ruling, thereby essentially depriving the trial court of an opportunity to correct the same. See also, Clark v. State, 363 So.2d 331 (Fla. 1978) concerning the contemporaneous objection rule.

Assuming arguendo the impropriety of the trial court's admission of testimony concerning the criminal nature of Respondent's arrest location, Petitioner alternatively maintains

that the admission of this evidence was, at most, harmless error under the particular circumstances at bar. First of all, the 17 pages of Officer Moore's trial testimony about which Respondent complains reflects nothing more than a general description of narcotics transactions and Officer Moore's experience in narcotics investigations. Indeed, this Court must be mindful of the fact that Respondent was charged with and tried for the crime of tampering with evidence, an essential element of which was the existence of a pending investigation by the Hollywood Police Department. Consequently, Officer Moore's mere general testimony concerning narcotics investigations and his experience therein was relevant to simply show the entire context out of which Respondent's criminal conduct arose. See Hall v. State, 403 So.2d 1321, 1324 (Fla. 1981)(evidence admissible "to show the general context in which the criminal action occurred."); Ruffin v. State, 397 So.2d 277,280 (Fla. 1981)("establishment of the entire context out of which the criminal actions occurred."); See also Ehrhardt, Fla. Evidence, § 404.16 (2d Ed. 1984) and cases cited therein. That Respondent was shown through the testimony adduced at trial to be selling cocaine was unavoidable given the specific nature of the crime charged against Respondent. Indeed, it was impossible to give a complete or intelligent account of the crime charged, i.e., tampering with evidence during a narcotics investigation, without reference to the fact that Respondent was possessing and apparently selling cocaine. See Nickels v. State, 90 Fla. 659, 106 So. 479,489 (1925).

Additionally, the harmlessness of any error in admitting Officer Moore's testimony is further demonstrated by the fact that the evidence of Respondent 's guilt is clear. Nothwithstanding the disputed testimony, both Officers Moore and Miller testified that they observed a nervous-looking Respondent meet with another individual in front of a grocery store. The officers observed Respondent to have a brief conversation with this other individual. The attention of the two men, Respondent and the other individual, soon focused upon a small white rock in Respondent's cupped hand. Respondent was heard to have said, "I've got what you need." Upon noticing the officers, Respondent quickly walked away, crushing the object between his fingers, dropping it in a puddle, and stating to the officers, "This is one rock you ain't going to find." (R 110-126). The officers then observed a white powdery substance fall from Respondent's palm into the puddle.

In his defense, although Respondent did not deny his presence in the area, he merely denied disposing of any substance and denied making any statements to the officers. (R 225-232). Since the record evidence clearly demonstrated Respondent's guilt, it can be said beyond a reasonable doubt that any error stemming from the disputed testimony would not have affected the verdict. State v. DiGuilio, 491 So.2d 1129 (Fla. 1986). Certainly, any alleged impermissible evidence was outweighed by the permissible evidence presented at Respondent's trial.

Moreover, as held by the Fourth District Court of Appeal in Gillion v. State, 547 So.2d 719 (Fla. 4th DCA 1989), the mere identification of a location as a high-crime area does not constitute reversible error in and of itself. For, as noted in Gillion, the phrase "high-crime area" might apply to all of South Florida. Id. at 720.

Florida's harmless error statute, § 59.041, Fla. Stat. (1989), provides that no judgment shall be reversed, or new trial granted, on the ground of the improper admission of evidence unless the error complained of has resulted in a "miscarriage of justice." In light the particular facts involved herein, it cannot be said that the trial court's allowance of general testimony concerning the arresting officer's description of and experience with narcotics investigations, including the unobjected description of the area in which Respondent was arrested, resulted in a "miscarriage of justice" so as to require reversal. If any error was committed by the trial court in this regard, the error was harmless. See § 59.041, Fla. Stat. (1989); State v. DiGuilio, supra

CONCLUSION

Based upon the foregoing argument and authorities cited herein, Petitioner respectfully requests this Honorable Court reverse the decision of the Fourth District Court of Appeal.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida

DOUGLAS J. GLAID
Assistant Attorney General
Bar #249475
111 Georgia Avenue, Suite 204
West Palm Beach, Florida 33401
(407) 837-5062

Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief has been furnished by Courier to: ALLEN J. DEWEESE, Counsel for Defendant, Fifteenth Judicial Circuit of Florida, The Governmental Center/9th Floor, 301 North Olive Avenue, West Palm Beach, Florida, this 2nd day of November, 1990.

Of Counsel

baa