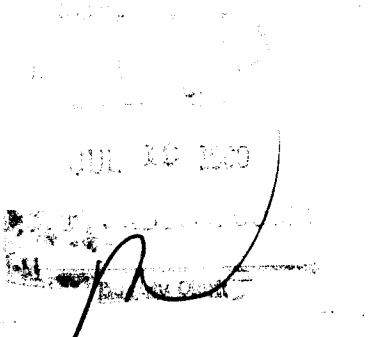
IN THE SUPREME COURT OF FLORIDA



STATE OF FLORIDA,

Petitioner,

vs.

WILLIAM JOHNSON,

Respondent.

Case No. 76,054

Johnson v. State
559 So. 2d 729 (Fla. App. 1990)

SUPPLEMENTAL BRIEF OF RESPONDENT

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PRELIMINARY STATEMENT

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

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

The following symbol will be used:

R = Record on Appeal

STATEMENT OF THE CASE AND FACTS

Two undercover police officers observed Respondent outside of a store conversing with another man. Respondent had his hand open and both were looking down at what looked like a cocaine rock in his hand. Respondent told the other man that he had what he needed. As the police left their car to approach, Respondent closed his hand and walked away. The police identified themselves and asked him to stop. Respondent ground the object in his hand into powder and threw it in a puddle. He said, "This is one rock you ain't going to find" (R 110-126).

The testimony of the state's first witness, Officer Moore, began with a general account of the officer's work with the Vice Unit and of he area where Respondent was arrested. Seventeen pages of the beginning of the officer's testimony (R 90-106) are duplicated in the Appendix to this brief. In this pages, over numerous defense objections, the prosecutor elicits from the witness extensive testimony about the witness's general experience with crack cocaine sales and about the nature of the area where Respondent was arrested as an area known for such sales.

The state's second witness was the second police officer, Officer Miller. Miller's testimony about Respondent's arrest was essentially similar to Moore's (R 175-181).

Respondent testified on his own behalf that he was there looking for a friend and had nothing in his hand. He denied the statements which the police said he made (R 225-227).

SUMMARY OF ARGUMENT

The state began its case against Respondent with lengthy testimony from a police officer about the Vice Unit's operations in the area where Respondent was arrested, and with a description of the area as one where much illegal activity took place and where numerous other arrests had been made. The error in admission of this testimony could not be harmless because Respondent was charged not with possession but with destruction of evidence; the testimony about the area of the arrest would have convinced the jury that the substance destroyed was cocaine and that Respondent was a dealer. Furthermore, the extent of the testimony made it a feature of the trial. This Court could not say that the error was harmless beyond a reasonable doubt.

ARGUMENT

THE IDENTIFICATION OF THE LOCATION OF THE ARREST AS A HIGH CRIME AREA WAS NOT HARMLESS ERROR.

Appended to this brief are 17 pages of transcript from the beginning of the state's case against Respondent, the testimony of the arresting officer. In these pages, numerous and repeated defense objections are registered to extensive testimony by the officer about his experience with the Vice Unit investigating street level crack cocaine sales and making arrests in the area where Respondent was arrested. This lengthy testimony was irrelevant to Respondent's specific case yet operated greatly to Respondent's prejudice by portraying Respondent as just another of the cast of bad characters with whom the police dealt in this area known for narcotics, prostitution, robberies, and burglaries, and where numerous prior arrests had been made (R 99-100). The exaggerated length of this unnecessary testimony gave it undue prominence and thereby compounded the prejudice.

This testimony could not be harmless error because Respondent was not charged with possession of cocaine, but rather with tampering with evidence when he discarded a substance which the police believed to be cocaine. The police testified that they believed that Respondent was selling cocaine (R 119), and the improper evidence served only to bolster this conclusion. The jury was therefore apparently convinced that Respondent was one of the usual sellers of cocaine in the area and that he destroyed the evidence for that reason. Furthermore, the very extent of the testimony (17 transcript pages) rendered it a feature of the trial

which could not be harmless. Certainly this Court could not say, as it would have to, that the error was harmless beyond a reasonable doubt. State v. DiGuilio, 491 So.2d 1129 (Fla. 1986); State v. Lee, 531 So.2d 133, 136 (Fla. 1988); Chapman v. California, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967).

CONCLUSION

Based on the foregoing arguments and the authorities cited therein, Respondent respectfully requests this Court affirm the decision of the Fourth District Court of Appeal.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by courier to Sylvia Alonso, Assistant Attorney General, Elisha Newton Dimick Building, Room 240, 111 Georgia Avenue, West Palm Beach, Florida 33401 this 17th day of July, 1990.

Counsel for Respondent