

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2008

KELLY MOSELY,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D07-4195

[January 5, 2009]

KLEIN, J.

Appellant was charged with and convicted of possession of cocaine. He argues that the trial court erred in allowing into evidence the fact that he had \$200 in his pocket when he was arrested. We reverse.

A detective testified that he observed two people, one flagging down cars in a commercial area. As the officer approached, they started to walk away and appellant dropped cocaine rocks. When the officer picked the rocks up, appellant told him they were fake; however, they tested positive for cocaine. Appellant also had \$200 in his pocket.

Over appellant's objection, the trial court allowed the officer to testify that appellant had \$200 in his pocket when he was arrested. Appellant argues that, because he was charged only with possession, the evidence of money found in his pocket was irrelevant and prejudicial. Appellant's argument is supported by the factually similar cases of *Buitrago v. State*, 950 So. 2d 531, 532 (Fla. 4th DCA 2007), and *Ferguson v. State*, 697 So. 2d 979 (Fla. 4th DCA 1997), in which we held that, in possession cases, evidence of money found on the defendant was irrelevant and prejudicial.

The state relies on *Holmes v. State*, 710 So. 2d 651, 652 (Fla. 4th DCA 1998), but in *Holmes* the defendant was charged with trafficking, which made the cash relevant. Accordingly, as we did in *Buitrago* and *Ferguson*, we reverse for a new trial.

FARMER and DAMOORGIAN, JJ., concur.

* * *

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Mily Rodriguez-Powell, Judge; L.T. Case No. 05-12726CF10A.

Carey Haughwout, Public Defender, and Peggy Natale, Assistant Public Defender, West Palm Beach, for appellant.

Bill McCollum, Attorney General, Tallahassee, and Georgina Jimenez-Orosa, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.