

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-KA-00214 COA**

**KENRIC ROSS A/K/A KENDRIC ROSS A/K/A
KENDRICK ROSS**

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

DATE OF JUDGMENT:	02/08/96
TRIAL JUDGE:	HON. MICHAEL RAY EUBANKS
COURT FROM WHICH APPEALED:	LAWRENCE COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	JOHN E. JACKSON
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: SCOTT STUART
DISTRICT ATTORNEY:	RICHARD DOUGLASS
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	SALE OF A CONTROLLED SUBSTANCE: SENTENCED TO A TERM OF 30 YRS IN THE MDOC, WITH 15 YRS OF THE IMPRISONMENT PORTION TO BE SUSPENDED
DISPOSITION:	AFFIRMED - 12/2/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	12/23/97

BEFORE THOMAS, P.J., HERRING, AND HINKEBEIN, JJ.

HERRING, C.J., FOR THE COURT:

This is an appeal from the Circuit Court of Lawrence County, Mississippi. Kendrick Ross was tried and convicted of selling cocaine and sentenced to thirty years, with fifteen years suspended, in the custody of the Mississippi Department of Corrections. Ross now appeals his conviction to this Court. Finding no error, we affirm.

FACTS

Kendrick Ross was indicted for the sale of cocaine by the Grand Jury of Lawrence County,

Mississippi. The alleged sale occurred on October 24, 1993, at the home of the Appellant's parents, Mr. and Mrs. Elworth Ross, in the China Lee community of Lawrence County. On that evening, Pearl River Basin Narcotics Task Force Officer Darryl Hilliard was working undercover in effort to purchase crack cocaine. Officer Hilliard first attempted to buy from Wanda Stevens. Stevens claimed to be out of cocaine, but she knew where Hilliard could get some. She went with Hilliard and pointed out the Ross home to him. Officer Hilliard then returned Stevens to her home, and he went to meet with the other officers involved in the case. At that time it was agreed that Officer Hilliard would return to the Ross home in the China Lee community and attempt to buy cocaine.

When Officer Hilliard drove back to the Ross home, he noticed an Oldsmobile automobile arrive just before he did. He attempted to get the license tag number but discovered that the vehicle had no license plate. Larry Ross was present in the doorway when Officer Hilliard arrived and invited Hilliard inside. Hilliard stated that after he entered the home, he saw Kendrick Ross in the den lying upon a black or dark colored sofa. Kendrick Ross then stated that he wanted a "twenty," or twenty dollars in exchange for a rock of crack cocaine. When Hilliard paid the twenty dollars, Kendrick reached under the sofa and retrieved a crystal ashtray. From this ashtray, Kendrick took a rock of crack cocaine and handed the cocaine to Larry Ross, who in turn handed it to Officer Hilliard. Hilliard then left the home and met with the other law enforcement officers.

B. THE ISSUES

The issues raised by the Appellant as stated in his brief are as follows:

I. THE TESTIMONY OF THE STATE'S WITNESSES IN CHIEF RAISE REASONABLE DOUBT SEVERE ENOUGH TO WARRANT A REVERSAL OF CONVICTION.

II. THE DEFENSE MOTION FOR A NEW TRIAL SHOULD HAVE BEEN GRANTED BECAUSE OF AN INSUFFICIENCY IN THE EVIDENCE.

C. ANALYSIS

Both of the issues mentioned above test the weight and sufficiency of the evidence. Therefore, they will be discussed together.

Our standard of review in cases involving an objection to a jury verdict based on the claim that the verdict was against the overwhelming weight of the evidence has most recently been explained by the Mississippi Supreme Court in *Herrington v. Spell*, 692 So. 2d 93 (Miss. 1997) wherein the court stated:

In determining whether a jury verdict is against the overwhelming weight of the evidence, this Court must accept as true the evidence which supports the verdict and will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial. Only when the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice will this Court disturb it on appeal.

Herrington, 692 So. 2d at 103-04 (citations omitted). Although Herrington was a civil case, the standard is the same in criminal cases. *See Thornhill v. State, 561 So. 2d 1025, 1030 (Miss. 1989); Benson v. State, 551 So. 2d 188, 193 (Miss. 1989)* (citing *McFee v. State, 511 So. 2d 130, 133-34 (Miss. 1987)*). By challenging the trial court's denial of his motion for a judgment notwithstanding the verdict, or in the alternative, for a new trial, Ross tests the legal sufficiency of the evidence presented against him. The standard of review of an appellate court in regard to a trial court's ruling on a motion JNOV or for a new trial is different from the standard of review in regard to a challenge to the weight of the evidence. As our Mississippi Supreme Court has recently held:

When on appeal one convicted of a criminal offense challenges the legal sufficiency of the evidence, our authority to interfere with the jury's verdict is quite limited. We proceed by considering all of the evidence--not just that supporting the case for the prosecution--in the light most consistent with the verdict. We give the prosecution the benefit of all inferences that may reasonably be drawn from the evidence. If the facts and inferences so considered points in favor of the accused with sufficient force that reasonable men could not have found beyond a reasonable doubt that he was guilty, reversal and discharge are required. On the other hand, if there is in the record substantial evidence of such quality and weight that, having in mind the beyond a reasonable doubt burden of proof standard, reasonable and fair minded jurors in the exercise of impartial judgment might have reached different conclusions, the verdict of guilty is beyond our authority to disturb.

Brooks v. State, 695 So. 2d 593, 594 (Miss. 1997).

As to Ross's contention that the verdict was against the overwhelming weight of the evidence, a review of the record in the case *sub judice* reveals no unconscionable injustice resulting from the jury's findings. While it is true that Ross contests Officer Hilliard's identification of him, the determination as to who was telling the truth was properly made by the jury as the finder of fact. One of the basic tenets of our judicial system is that any questions regarding the weight and worth of witness testimony or witness credibility are for the jury to resolve. ***Eakes v. State, 665 So. 2d 852, 872 (Miss. 1995)***. In this case, the jury rejected Ross's explanation of the events that took place on October 24, 1993, and believed the testimony of Officer Hilliard. Moreover, we will not overturn the findings of the jury acting in the capacity of a fact finder unless those findings are clearly erroneous. ***Herrington, 692 So. 2d at 104***. We cannot say that the jury's verdict was clearly erroneous. Thus, we hold that the jury's verdict was not against the overwhelming weight of the evidence.

In reviewing the record under the sufficiency of the evidence standard, we find that there was sufficient evidence presented for a reasonable and fair minded jury to have found Ross guilty beyond a reasonable doubt. Neither of the issues raised by the Appellant have merit. Therefore, we affirm.

THE JUDGMENT OF THE LAWRENCE COUNTY CIRCUIT COURT OF CONVICTION

OF THE SALE OF A CONTROLLED SUBSTANCE AND SENTENCE OF THIRTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, WITH FIFTEEN YEARS SUSPENDED, IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.