IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-KA-00327 COA

BOBBY DAN BENNETTE **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:	2/19/96
TRIAL JUDGE:	HON. MARCUS D. GORDON
COURT FROM WHICH APPEALED:	SCOTT COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	PAT DONALD
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: SCOTT STUART
DISTRICT ATTORNEY:	KEN TURNER
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	CONVICTION FOR POSSESSION OF COCAINE.
DISPOSITION:	AFFIRMED - 12/16/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	2/4/98

BEFORE McMILLIN, P.J., DIAZ, AND HERRING, JJ.

HERRING, J., FOR THE COURT:

This is an appeal from the Circuit Court of Scott County, Mississippi, where Bobby Dan Bennette was found guilty of possession of crack cocaine. Bennette now claims that the trial court erred in admitting into evidence two rocks of crack cocaine because they were the fruits of an illegal search and seizure. We disagree and affirm the ruling of the trial court.

A. THE FACTS

On January 22, 1995, law enforcement officers in Forest, Mississippi, stopped a small pickup truck because it had no license plate. When the officers approached the vehicle they noticed the strong smell of alcohol. Based on their suspicions arising from the odor, the officers ordered the driver out of the vehicle. However, the driver did not smell of alcohol. The officers then turned their attention to the passenger, who was later identified as Bennette, because they noticed a bottle of whiskey within his reach. The officers also observed a handgun on the floorboard of the vehicle at Bennette's feet. The officers then ordered Bennette out of the vehicle and conducted a weapons search of Bennette's person. Bennette was asked to remove the items from his pockets and in compliance with this order he presented what he admitted was a crack pipe. After the search of Bennette's pockets revealed no weapons, the officers asked him for identification. Bennette then removed his wallet in an attempt to retrieve his social security card, and when Bennette opened his wallet a piece of tin foil fell out and landed on the vehicle's tailgate. Bennette claims that it was the officers who removed his wallet and searched it, thereby finding the tin foil covered objects. At any rate, the officers opened the tin foil and found that it contained two rocks of crack cocaine. The officers seized this evidence and it was eventually admitted against Bennette at trial. Bennette timely objected to its admission and the trial court overruled this objection and allowed the crack into evidence.

B. THE ISSUES

DID THE TRIAL COURT COMMIT REVERSIBLE ERROR IN ADMITTING INTO EVIDENCE, OVER THE TIMELY OBJECTION OF DEFENDANT, CRACK COCAINE, WHICH DEFENDANT ALLEGES WAS SEIZED FROM HIM AS A DIRECT RESULT OF AN ILLEGAL SEARCH OF DEFENDANT'S PERSON? WAS THE PERTINENT SEARCH BEYOND THE SCOPE OF A PERMISSIBLE SEARCH INCIDENT TO ARREST?

C. ANALYSIS

We begin our discussion by noting that "[a] trial judge enjoys a great deal of discretion as to the relevancy and admissibility of evidence. Unless the judge abuses this discretion so as to be prejudicial to the accused, the Court will not reverse this ruling." ***Fisher v. State,* 690 So. 2d 268, 274 (Miss. 1996).** With this standard in mind we will now turn to our law of search and seizure.

Bennette concedes that his arrest was a valid warrantless arrest. He also concedes that the law enforcement officers present had a right to conduct a limited search incident to that arrest. However, Bennette claims that the officers exceeded the scope of the limited search in obtaining the crack cocaine. Specifically, he claims that once the officers searched him for weapons and found none, the justification for a search incident to arrest ceased. We disagree. The Fourth Amendment of the United States Constitution does not prohibit all searches and seizures, only searches and seizures that are unreasonable. ***Terry v. Ohio,* 392 U.S. 1, 9 (1968).** We see absolutely no unreasonable conduct on the part of the officers in the case *sub judice*. We are not prepared to say that a police officer, with probable cause to believe that a suspect has committed a crime, is not authorized to ask that person for identification. This course of conduct, if in fact a search at all, is certainly reasonable and is minimally intrusive in light of the situation. Bennette claims that the search exceeded the scope of a valid search incident to arrest. We disagree. In addition to being reasonable, the search of Bennette's wallet, if a search at all, was justified as a search incident to arrest. As the Mississippi Supreme Court

has stated:

A search incident to a valid arrest is not limited to a Terry type search. The area within the arrestee's immediate control, from which he might obtain a weapon or where he may conceal evidence, may also be searched, consistent with the Fourth Amendment. The personal effects in the arrestee's possession at the place of detention, which were subject to a search at the time and place of arrest, may later be searched and seized without a warrant at the place of detention.

Rankin v. State,* 636 So. 2d 652, 657 (1994)** (citations omitted). The contents of Bennette's wallet were well within his reach at the time of arrest. In ***Sanders v. State,* 403 So. 2d 1288, 1291 (Miss. 1981)**, the Mississippi Supreme Court held that containers within the suspect's immediate control may be searched incident to his arrest. The *Sanders* court defined containers "as any object capable of holding another object." ***Id. Thus, Bennette's wallet falls under the definition of container. Therefore, because the wallet was within the immediate control of Bennette, the officers were entitled to search the wallet as a search incident to Bennette's arrest. Even if we accept Bennette's contention that the officers searched and looked through his wallet, and disregard the Officers' testimony that Bennette removed the wallet himself, we are still bound to conclude that there was no Fourth Amendment violation in this case.

In addition, accepting the officers' testimony as true, once the crack cocaine fell out of the wallet it came into the plain view of the officers, and thus arguably fell within the "plain view" exception to the warrant requirement of the Fourth Amendment which allows warrantless searches under such circumstances. "The plain view exception is intended to allow police officers to seize incriminating items that are discovered in the course of their legitimate activities, not to justify warrantless, exploratory searches of containers that purport to contain innocuous materials." ***Brown v. State,* 690 So. 2d 276, 285 (Miss. 1996).** The *Brown* court allowed into evidence a pair of shoes found in plain view in a room in which the officers were properly located, because they had been alerted to the evidentiary nature of the shoes. ***Id.*** Likewise, in the case *sub judice*, in light of the fact that the officers had previously recovered a crack pipe from Bennette, they had probable cause to believe that the tin foil contained evidence of a crime. Thus, the officers also properly seized the crack cocaine in accord with the plain view exception to the Fourth Amendment.

THE JUDGMENT OF THE CIRCUIT COURT OF SCOTT COUNTY OF CONVICTION OF POSSESSION OF COCAINE AND SENTENCE OF TWO YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND FINE OF $2,000 IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO SCOTT COUNTY.

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