

IN THE COURT OF APPEALS 12/03/96

OF THE

STATE OF MISSISSIPPI

NO. 94-KA-00824 COA

**CHARLES FUNCHES A/K/A CHARLES FUNCHESS A/K/A CHARLES DARIN
FUNCHESS**

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. MICHAEL R. EUBANKS

COURT FROM WHICH APPEALED: CIRCUIT COURT OF LAWRENCE COUNTY

ATTORNEY FOR APPELLANT:

JOHN E. JACKSON

ATTORNEYS FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL BY: JOLENE M. LOWRY

DISTRICT ATTORNEY: KATHY SONES, MANYA CREEL

NATURE OF THE CASE: SALE OF A CONTROLLED SUBSTANCE, COCAINE

TRIAL COURT DISPOSITION: 15 YRS IN MDOC, PAY A FINE OF \$3,000, AND ALL COSTS
IN THIS MATTER, WITH 5 YRS SUSPENDED UNDER PROBATION

BEFORE BRIDGES, P.J., KING, AND PAYNE, JJ.

PER CURIAM:

Charles Funchess was indicted for the sale of crack cocaine to an undercover agent working for the Mississippi Bureau of Narcotics. Funchess received a jury trial in the Circuit Court of Lawrence County; the jury returned a verdict of guilty. Funchess was sentenced to fifteen years in the custody of the Mississippi Department of Corrections, with five years of that sentence suspended

and to pay a fine of \$3,000, and all costs. Aggrieved by the judgment, Funchess appeals stating that the trial court committed error in denying his motion for a new trial or JNOV based on the fact that there was insufficient evidence supporting the verdict, and that the verdict was against the overwhelming weight of the evidence.

FACTS

On or about December 18, 1992, the Appellant sold two rocks of cocaine to Elisha Adcox, an undercover agent for the Mississippi Bureau of Narcotics. During the round-up, which is the actual arrest of several alleged drug dealers, the police mistakenly picked up another person named Charles Funchess, which was the Appellant's uncle. While the older Charles Funchess was in jail, the younger Appellant went by Officer Lewis's home and stated, "I want you to ride downtown with me. I heard they was looking for me." The younger Funchess was taken down town and arrested. During trial, Adcox, the undercover agent, identified the younger Funchess as the man who sold her the cocaine. Also at trial, Officer Lewis, identified the younger Funchess as the man who came to his house and was later taken downtown.

ARGUMENT AND DISCUSSION OF THE LAW

WHETHER THE TRIAL COURT COMMITTED ERROR IN DENYING THE APPELLANT'S MOTION FOR A NEW TRIAL/JNOV BASED ON THE PREMISE THAT THERE WAS INSUFFICIENT EVIDENCE SUPPORTING THE VERDICT AND THAT THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE

The standard of review for a challenge to the sufficiency of the evidence is stated in *McClain v. State*:

In appeals from an overruled motion for JNOV, the sufficiency of the evidence as a matter of law is viewed and tested in a light most favorable to the State. The credible evidence . . . consistent with guilt must be accepted as true. The prosecution must be given the benefit of all favorable inferences that may be reasonably drawn from

the evidence. Matters regarding the weight and credibility of the evidence are to be

resolved by the jury. We are authorized to reverse only where, with respect to one or more of the elements of the offense charged, the evidence so considered is such that reasonable and fair-minded jurors could only find the accused not guilty.

McClain v. State, 625 So. 2d 774, 778 (Miss. 1993); *see Williams v. State*, 595 So. 2d 1299, 1302 (Miss. 1992); *Heidel v. State*, 587 So. 2d 835, 838 (Miss. 1991).

The standard of review for a challenge to the weight of the evidence is found in *Thornhill v. State*:

In determining whether or not 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 it is convinced that the circuit court has abused its discretion in failing to grant a new trial.

Thornhill v. State, 561 So. 2d 1025, 1030 (Miss. 1989); *see Isaac v. State*, 645 So. 2d 903, 907 (Miss. 1994) (citations omitted).

First, as to the sufficiency of the evidence, the State produced evidence that the younger Funchess was indeed the man who sold the cocaine. He was identified by two separate people, Adcox, the agent who bought the cocaine, and Officer Lewis, who took Funchess to the station. Under the standard articulated above, sufficient evidence to support the jury's verdict of guilty existed, and the Appellant's motion is without merit.

Second, as to the weight of the evidence, the court must accept as true the evidence which supports the verdict. *Griffin v. State*, 607 So. 2d 1197, 1201 (Miss. 1992). Here, the verdict was not contrary to the overwhelming weight of the evidence. It is at the jury's discretion whether to believe or disbelieve the testimony it hears, and to attach as much weight as it wishes to that testimony. Taking the facts, as explained above, in a light most favorable to the verdict, a reasonable juror could find the Defendant guilty of selling cocaine.

Because of the reasons set forth in this opinion, we find Funchess's appeal to be without merit and affirm the lower court on all issues.

THE JUDGMENT OF THE CIRCUIT COURT OF LAWRENCE COUNTY OF CONVICTION OF THE SALE OF COCAINE AND SENTENCE OF FIFTEEN (15) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, WITH FIVE (5) YEARS SUSPENDED UNDER PROBATION, AND PAY A FINE OF \$3,000 IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.

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

