

**IN THE COURT OF APPEALS 08/06/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 94-KA-00138 COA**

**LENOIS WALKER A/K/A LEENOIS O. WALKER**

**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

TRIAL JUDGE: HON. ROBERT LEWIS GIBBS

COURT FROM WHICH APPEALED: YAZOO COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

DAN W. DUGGAN, JR.

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY DEIDRE MCCRORY

DISTRICT ATTORNEY: EDWARD J. PETERS

NATURE OF THE CASE: FELONY-POSSESSION OF COCAINE

TRIAL COURT DISPOSITION: SENTENCED TO SERVE THREE (3) YEARS IN THE MDOC  
WITH ONE (1) YEAR SUSPENDED AND TWO (2) YEARS TO SERVE; UPON RELEASE TO  
BE PLACED ON TWO (2) YEARS SUPERVISED PROBATION.

BEFORE FRAISER, C.J., DIAZ, AND McMILLIN, JJ.

FRAISER, C.J., FOR THE COURT:

Lenois Walker a/k/a Leenois O. Walker (Walker) was indicted, tried, and convicted for possession of cocaine in the Yazoo County Circuit Court. He was sentenced to serve three (3) years in the custody of the Mississippi Department of Corrections, with one year suspended and two years to serve. He presents two issues on appeal:

I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN NOT GRANTING DEFENDANT'S MOTION FOR DIRECTED VERDICT AT THE CLOSE OF THE STATE'S CASE BECAUSE THE STATE FAILED TO PROVE POSSESSION.

II. THE JURY'S VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

## FACTS

Walker and his girlfriend, Janice Jones (Jones), were awakened by police on the morning of January 25, 1993. Officers Wallace, Gregg, and Willingham of the Yazoo City Police Department entered Jones's apartment on the morning of January 25 pursuant to a search warrant authorizing a search for cocaine. Officer Gregg found a matchbox containing what was later determined to be crack cocaine in a flower pot atop a planter in Jones's living room. The police arrested Jones and Walker and charged them with possession of cocaine.

At trial, Officer Gregg testified that he read Walker his *Miranda* rights, and Walker proceeded to tell Gregg that the cocaine was his and that Jones did not know about it. Officer Willingham testified that he was in the booking room when Walker was read his rights and that Walker told Gregg that the cocaine was his and that his girlfriend knew nothing about it. Jones testified that Walker "told me to go and make a statement and say that the cocaine was his." In Jones's statement to the police she stated: "My boyfriend, Leenois Walker, stated to me, Janice Jones, that the cocaine belonged to him while we were in jail after we were arrested." Walker took the stand in his own defense and denied telling the police the cocaine was his. In response to Jones's statement to the police, he testified that she was lying. He stated that the cocaine belonged to his uncle who was also in Jones's house and was arrested with them.

I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN NOT GRANTING DEFENDANT'S MOTION FOR DIRECTED VERDICT AT THE CLOSE OF THE STATE'S CASE BECAUSE THE STATE FAILED TO PROVE POSSESSION.

Walker challenges the sufficiency of the evidence based on the State's supposed failure to prove Walker's possession of the cocaine. The standard of review for challenges to the sufficiency of the evidence is set forth in *McClain v. State*:

The three challenges by McClain (motion for directed verdict, request for peremptory instruction, and motion for JNOV) challenge the legal sufficiency of the evidence. Since each requires consideration of the evidence before the court when made, this Court properly reviews the ruling on the last occasion the challenge was made in the trial court. This occurred when the Circuit Court overruled McClain's motion for JNOV. 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 McClain's 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). Walker's last challenge to the sufficiency of the evidence was made in his motion for JNOV. We review his motion in the light most favorable to the State.

Walker contends that the State failed to prove he had possession of the cocaine. The law pertaining to possession of cocaine is well established:

[T]here must be sufficient facts to warrant a finding that the defendant was aware of the presence and character of the particular substance and was intentionally and consciously in possession of it. It need not be actual possession. Constructive possession may be shown by establishing that the drug involved was subject to his dominion and control. Proximity is usually an essential element, but by itself is not adequate in the absence of other incriminating circumstances.

*Berry v. State*, 652 So. 2d 745, 747 (Miss. 1995) (citing *Curry v. State* 249 So. 2d 414, 416 (Miss. 1971)). In the case sub judice, the evidence shows that crack cocaine was found in the house where Walker frequently resided with his girlfriend. Walker was present when the cocaine was found. Additionally, two Yazoo City police officers testified that Walker stated the cocaine belonged to him and his girlfriend knew nothing about it. Jones, Walker's girlfriend, testified that Walker told her the cocaine was his and instructed her to tell the police as much. In light of the circumstances under which the cocaine was found and Walker's statements to the police and his girlfriend, there can be no doubt but that the verdict was undergirded by sufficient evidence. This issue is without merit.

**II. THE JURY'S VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.**

Walker argues that because he testified that the drugs were not his, and that he never told the police the drugs belonged to him, the evidence was so conflicting as to render the verdict incorrect and against the overwhelming weight of the evidence. As the following case law dictates, this Court cannot reverse on the weight of the evidence unless there is a clear abuse of discretion by the trial court:

[T]he challenge to the weight of the evidence via motion for a new trial implicates the trial court's sound discretion. . . . New trial decisions rest in the sound discretion of the trial court, and the motion should not be granted except to prevent an unconscionable injustice. We reverse only for abuse of discretion, and on review we accept as true all evidence favorable to the State.

. . . .

The jury is charged with the responsibility of weighing and considering the conflicting evidence and credibility of the witnesses and determining whose testimony should be believed.

*McClain v. State*, 625 So. 2d 774, 781 (Miss. 1993). Accepting as true all evidence favorable to the

State, this Court cannot say that the verdict was against the overwhelming weight of the evidence. The trial court did not abuse its discretion in refusing to grant a new trial.

Walker's assignments of error being meritless, we affirm.

**THE JUDGMENT OF THE YAZOO COUNTY CIRCUIT COURT OF CONVICTION FOR POSSESSION OF COCAINE AND SENTENCE OF THREE YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, ONE YEAR SUSPENDED, TWO YEARS TO SERVE, AND TWO YEARS PROBATION, IS AFFIRMED. COSTS OF THIS APPEAL ARE TAXED TO YAZOO COUNTY.**

**BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.**