

IN THE COURT OF APPEALS 05/07/96

OF THE

STATE OF MISSISSIPPI

NO. 93-KA-00307 COA

JERRY L. JOHNSON

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. JOSEPH C. WEBSTER

COURT FROM WHICH APPEALED: COAHOMA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

TOM T. ROSS, JR.

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL BY: SCOTT STUART

DISTRICT ATTORNEY: LAURENCE Y. MELLEN

NATURE OF THE CASE: CRIMINAL - TWO COUNTS OF SALE OF A CONTROLLED
SUBSTANCE, COCAINE.

TRIAL COURT DISPOSITION: CONVICTED ON BOTH COUNTS AND SENTENCED TO
SERVE A TERM OF SIXTY (60) YEARS IN THE MDOC AS AN HABITUAL OFFENDER

AND ORDERED TO PAY A FINE IN THE AMOUNT OF TWO MILLION (\$2,000,000.00) FOR EACH COUNT. SENTENCE AND FINE IMPOSED FOR COUNT II SHALL BE CONCURRENT WITH COUNT I.

BEFORE THOMAS, P.J., BARBER, AND SOUTHWICK, JJ.

PER CURIAM:

Jerry Johnson was convicted on two counts of selling cocaine. On appeal he asserts that the conviction was contrary to the overwhelming weight of the evidence and, he is therefore entitled to a new trial. Finding Johnson's argument without merit, we affirm.

FACTS

On May 29, 1992, an undercover agent, Margaret Hardmon, who was equipped with a hidden microphone, together with an informant, Marilyn Barron, sought to buy cocaine in the Clarksdale area. Two other agents were assigned to surveillance duty in a nearby automobile. Hardmon and Barron proceeded in a separate automobile. Hardmon testified that when she and Barron saw Johnson, they asked him what he had to sell. Johnson got into the car with Hardmon and Barron and retrieved a rock of cocaine from his pocket. Hardmon then gave Johnson twenty dollars in exchange for the rock of cocaine. Hardmon further testified that she saw Johnson again later that same night. At this time he sold her an additional rock of cocaine for another twenty dollars.

Barron corroborated Hardmon's testimony. Additionally, the agents on surveillance duty both testified that they saw Johnson with Hardmon and Barron at the time the recordings were made on both occasions that evening. Finally, the State introduced a tape of the conversations with Johnson along with an alleged transcript of the tape which was heard by the jury.

Johnson testified that he did not know either Officer Hardmon or Barron and denied ever selling any drugs to them.

ANALYSIS

The only issue is whether the convictions were against the overwhelming weight of the evidence. Johnson argues that the testimony of the State's witnesses was such that reasonable men could not have believed it beyond a reasonable doubt. According to Johnson, his testimony sufficiently impeached that of the State's witnesses, and therefore, the State failed to meet its burden of proof.

A motion for a new trial is committed to the sound discretion of the trial court. Unless this Court finds on review that the trial court abused its discretion in denying the motion for a new trial, we will not reverse. We do not proceed de novo and do not second guess the jury's assessment of the evidence or its verdict on disputed facts. *Veal v. State*, 585 So. 2d 693, 695 (Miss. 1991). The jury, not the reviewing court, is the sole judge of the credibility of the witnesses. *Jackson v. State*, 614 So. 2d 965, 972 (Miss. 1993). In the case at bar, the jury determined the credibility of the witness testimony in favor of the State.

Taking all of the evidence in the light most favorable to the State, we do not find that the conviction was against the overwhelming weight of the evidence. *Griffin v. State*, 607 So. 2d 1197, 1200-01 (Miss. 1990). Accordingly, Johnson's conviction is affirmed.

THE JUDGMENT OF THE COAHOMA COUNTY CIRCUIT COURT OF CONVICTION ON COUNTS ONE AND TWO FOR SALE OF A CONTROLLED SUBSTANCE (COCAINE) AND SENTENCE OF SIXTY (60) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND A FINE OF TWO MILLION DOLLARS (\$2,000,000.00) ON BOTH COUNTS IS AFFIRMED. COSTS ARE ASSESSED TO COAHOMA COUNTY.

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