

IN THE COURT OF APPEALS 05/07/96

OF THE

STATE OF MISSISSIPPI

NO. 93-KA-00956 COA

**IMO KIBWE JAWARA AND ROBERT LEWIS JONES A/K/A ROBERT CORNELIUS
JONES A/K/A "MULE"**

APPELLANTS

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

COLEMAN, J., DISSENTS:

I agree with the majority that the conviction of Imo Kibwe Jawara for the possession of more than one kilogram of marijuana should be affirmed. I dissent with utmost deference to the majority, but I nonetheless remain of the opinion that the trial court erred when it denied Robert Lewis Jones' motion for directed verdict.

The jury convicted Lewis of the possession of more than one kilogram of marijuana. The majority opinion places marijuana in Jawara's pocket, in a jacket in the passenger compartment of Jawara's car, and inside pots found in the trunk of Jawara's car. The marijuana in the pots weighed more than one kilogram. The majority opinion reflects only that Jones was a passenger in Jawara's car on a trip from Atlanta to New Orleans. There is no reference in the majority opinion to any evidence that Jones knew that the marijuana was inside the pots, which Jawara testified he was taking to Ras Mike in New Orleans. As I view the evidence in this case, Jones' only connection to the marijuana concealed inside the pots which were inside the trunk of Jawara's car was his proximity to it.

Proximity, without more, is insufficient to support a charge of possession of contraband such as marijuana. I believe that the evidence was insufficient to "warrant a finding that the accused was

aware of the presence and character of the particular substance and [was] intentionally and consciously in possession of it." *Berry v. State*, 652 So. 2d 745, 748 (Miss. 1995). Neither do I agree that Jones' role as a passenger in the front seat of an automobile establishes that the kilogram in the trunk of Jawara's car was subject to Jones' "dominion or control." *See Id.* at 746. Thus, I would affirm Jawara's conviction, but I would reverse and render Jones' conviction of the possession of more than one kilogram of marijuana.

KING, PAYNE AND SOUTHWICK, JJ., JOIN THIS SEPARATE WRITTEN OPINION.