

5/20/97

IN THE COURT OF APPEALS

OF THE

STATE OF MISSISSIPPI

NO. 94-KA-00376 COA

DARRYL PICKENS A/K/A DARRYL

TERMANYE PICKENS, A/K/A DARYL PICKENS

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. GEORGE C. CARLSON

COURT FROM WHICH APPEALED: CIRCUIT COURT OF DESOTO COUNTY

ATTORNEY FOR APPELLANT:

JAMES D. FRANKS

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: CHARLES W. MARISDISTRICT ATTORNEY: ROBERT J. KELLY

NATURE OF THE CASE: CRIMINAL - POSSESSION OF COCAINE WITH INTENT TO SELL

TRIAL COURT DISPOSITION: CONVICTION AND SENTENCE OF TWENTY (20) YEARS  
WITH TEN (10) YEARS SUSPENDED AND A FINE OF \$3,000.00.

MANDATE ISSUED: 6/10/97

BEFORE BRIDGES, C.J., HERRING, AND PAYNE, JJ.

BRIDGES, C.J., FOR THE COURT:

Darryl Pickens was convicted in the Circuit Court of DeSoto County of possession of cocaine with intent to sell, barter, transfer, distribute, or dispense. Aggrieved, he appeals arguing that 1) the trial court erred in admitting Exhibit 1, and 2) the trial court erred by refusing to grant a directed verdict based on the State's failure to prove the drugs that were tested were attributable to him, and 3) the trial court erred by refusing to grant a directed verdict based on the State's failure to show he possessed the drugs with intent to sell. We find no error and, accordingly, we affirm.

## FACTS

On April 16, 1993, Officer Biggins, a Hernando City Police Officer, was on routine marked patrol when he saw what appeared to be a drug transaction between Pickens and Jones. Jones appeared to be handing money to Pickens, and Pickens appeared to be handing drugs to Jones. When Biggins approached, the two men separated and Jones ran away. Pickens threw to the ground what was later found to be numerous rocks of crack cocaine ("rocks") and fled after hiding briefly behind a tree.

Biggins and the other responding officers retrieved approximately thirty-four (34) rocks from the scene. Eight rocks were found in the close vicinity of where Pickens had thrown them down. Twenty-six additional rocks were found near the tree where Pickens had been hiding. All of the rocks appeared to have been recently deposited where they were found. The rocks were then given to Sergeant Tim Harris of the DeSoto Metro Narcotics Unit who placed them in an evidence envelope. Detective Rhonda Criswell then filled in the information on the envelope and placed the envelope in the evidence locker. Seven rocks were chosen at random by the toxicologist for testing from the thirty-four (34) in the envelope. The tests revealed the rocks were cocaine. Pickens was later convicted of possession with intent to sell and was sentenced to 20 years with 10 suspended and a fine of \$3,000.00.

## ARGUMENT AND DISCUSSION OF LAW

### I. WHETHER THE TRIAL COURT ERRED IN ADMITTING EXHIBIT 1 INTO EVIDENCE.

Pickens argues on appeal that the State failed to establish properly the chain of custody of Exhibit 1, the cocaine found at the scene, and, therefore, that a directed verdict should have been granted. We disagree. The test for determining whether a proper chain of custody has been shown is whether there is any reasonable inference of probable tampering or substitution of evidence. *Grady v. State*, 274 So. 2d 141, 143 (Miss. 1973). Questions as to the chain of custody are within the sound discretion of the trial court, and will not be overturned on appeal except for an abuse of that discretion. *Wells v. State*, 604 So. 2d 271, 277 (Miss. 1992) *Morris v. State*, 436 So. 2d 1381, 1388 (Miss. 1983).

The record reflects that the cocaine was first given to Sergeant Tim Harris, who then placed the cocaine in an evidence envelope. After filling out the required information on the envelope, Detective Rhonda Criswell sealed the envelope in Sergeant Harris' presence. Criswell then put the envelope in an evidence locker where it was found later and taken to the Crime lab in Batesville for testing. We find this to be a sufficient showing of chain of custody, especially in light of the fact that Pickens has not shown this Court any evidence from which a reasonable inference of tampering could be derived.

Finding no abuse of discretion, we affirm the trial court's admission of the evidence envelope into evidence.

## II. WHETHER THE TRIAL COURT ERRED IN FAILING TO GRANT A DIRECTED VERDICT ON THE GROUNDS THAT THE STATE FAILED TO OFFER ANY PROOF THAT ANY OF THE SEVEN (7) ROCKS TESTED BY THE TOXICOLOGIST WERE EVER POSSESSED BY THE PICKENS.

Pickens argues that the only rocks that can be attributed to him are the eight rocks that were found near where he had been selling drugs to Jones. He further argues that the twenty-six (26) rocks that were found near the tree where he had briefly hidden could not be attributed to him. All of the rocks were subsequently commingled in one evidence envelope, and seven were randomly picked for testing. Pickens argues that since the seven randomly picked could have been exclusively from the twenty-six he claims could not be attributed to him, they also could not be attributed to him. This Court finds to the contrary. Our review of the record reveals that all of the rocks found could have been and were in fact connected to Pickens.

This Court's standard of review of denials of directed verdicts is as follows:

In passing upon a motion for a directed verdict, all evidence introduced by the state is accepted as true, together with any reasonable inferences that may be drawn from that evidence, and, if there is sufficient evidence to support a verdict of guilty, the motion for directed verdict must be overruled.

*Gray v. State*, 549 So. 2d 1316, 1318 (Miss. 1989) (citing *Guilbeau v. State*, 502 So. 2d 639, 641 (Miss. 1987)). Appeals from an overruled JNOV motion are viewed by this Court in a light most favorable to the State. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993). Any credible evidence consistent with guilt must be accepted as true. *McClain*, 625 So. 2d at 778. A challenge to the sufficiency of the evidence can result in a reversal only where the evidence, with respect to one or more of the elements of the offense charged, is such that reasonable and fair-minded jurors could only find the accused not guilty. *Id.* at 778. Viewing the evidence in a light most favorable to the State, we find that reasonable and fair minded jurors could have arrived at a guilty verdict in this case. Accordingly, we find no merit in this issue.

## III. WHETHER THE TRIAL COURT ERRED IN REFUSING TO GRANT A DIRECTED VERDICT ON THE GROUND THAT THE STATE FAILED TO PROVE INTENT.

Pickens next argues that intent was not proven and, therefore, that the trial court should have granted a directed verdict on those grounds. We disagree. Once again, our standard of review in reviewing the denial of a motion for directed verdict is dispositive of this issue. Appeals from an overruled JNOV motion are viewed by this Court in a light most favorable to the State. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993). Any credible evidence consistent with guilt must be accepted as true. *McClain*, 625 So. 2d at 778. A challenge to the sufficiency of the evidence can result in a reversal only where the evidence, with respect to one or more of the elements of the offense charged, is such that reasonable and fair-minded jurors could only find the accused not guilty. *Id.* at 778. There is ample evidence of intent in the record. Standing alone, the testimony of Sergeant Biggins concerning his observations of the drug transaction in question would be sufficient to prove intent. Accordingly, we find no error in the trial judge's denial of Pickens motion for new trial or judgment

notwithstanding the verdict.

**THE JUDGMENT OF THE CIRCUIT COURT OF DESOTO COUNTY OF CONVICTION OF POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DISTRIBUTE AND SENTENCE OF TWENTY (20) YEARS WITH TEN (10) YEARS SUSPENDED IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND FINE OF \$3,000.00 IS HEREBY AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO APPELLANT.**

**McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR. HINKEBEIN, J. NOT PARTICIPATING.**