IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-KA-00660 COA

JOSEPH EARL DANIELS **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

DATE OF JUDGMENT:	04/15/96
TRIAL JUDGE:	HON. ROBERT LEWIS GIBBS
COURT FROM WHICH APPEALED:	HINDS COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	THOMAS M. FORTNER
ATTORNEYS FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: JOLENE M. LOWRY
DISTRICT ATTORNEY:	EDWARD J. PETERS
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	C/S POSS COCAINE W/I (HABITUAL OFFENDER):SENTENCED TO SERVE A TERM OF 30 YRS IN THE CUSTODY OF THE MDOC, WITHOUT PAROLE, PROBATION REDUCTION OR SUSPENSION OF SENTENCE
DISPOSITION:	AFFIRMED-2/10/98
MOTION FOR REHEARING FILED:	2/25/98
CERTIORARI FILED:4/17/1998	
MANDATE ISSUED:	

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

KING, J., FOR THE COURT:

This is an appeal from the Circuit Court of Hinds County, Mississippi, where Joseph Earl Daniels was convicted of the crime of possession of cocaine with the intent to distribute, and sentenced to thirty years in the custody of the Mississippi Department of Corrections. Daniels was sentenced as an habitual drug offender, pursuant to Miss. Code Ann. §§41-29-147 and 99-19-81 (Supp. 1994). Daniels appeals his conviction on two grounds:

I. THE TRIAL COURT COMMITTED PLAIN AND REVERSIBLE ERROR BY ALLOWING DETECTIVE ALVALINE BAGGETT TO RENDER EXPERT TESTIMONY BEFORE THE TRIAL JURY WITHOUT BEING OFFERED, TENDERED OR ACCEPTED AS AN EXPERT IN ANY FIELD IN VIOLATION OF RULE 702, MISSISSIPPI RULES OF EVIDENCE.

II. THE VERDICT OF THE TRIAL JURY AND THE SENTENCE IMPOSED BY THE COURT IS CONTRARY TO THE PRINCIPLES OF LAW AND AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE PRODUCED AT THE TRIAL.

FACTS

Detectives Alvaline Baggett and Preston Carter were part of the surveillance team of the Jackson Police Department's Narcotics Division. On November 1, 1994, the surveillance team began its stakeout of an apartment complex located at 1305 Cleveland Avenue, Jackson, Mississippi. The complex, directly across the street from the campus of Jackson State University, was where Detective Baggett was positioned. Detective Baggett was to watch Apartment A, which had been determined to be a place where drugs were sold, for any drug buying activity. The detectives were not looking for any particular individual, but rather were there to watch an area suspected of being a place to buy drugs. Their duty was to observe parties buying and selling drugs and then arrest them. For efficiency, Detective Carter was located in the vicinity of the complex where Baggett could radio him with information on any suspected drug buyers that she saw leave the complex. It was later determined that the occupants of Apartment A were Joseph Daniels and Stephanie Chaffee.

Baggett witnessed several people drive up and enter the apartment only to leave a few minutes later. She described this procedure as being a "drive up" or a "drive by" drug buy. She did not see any transactions take place, but described the activities surrounding Apartment A in the complex. The people in and around the apartment were under surveillance, as well as those persons who drove up to the apartment. Baggett testified to observing Joseph Daniels and his brother, Robert Jones, enter and leave the apartment several times, and talk with several people who drove up to the apartment.

Baggett at trial described one of the transactions as follows: A blue Ford pick-up truck pulled into the complex. Jones spoke with the two occupants in the parking lot. Jones then yelled to Daniels, who was inside the apartment. Daniels yelled for the passenger to come inside the apartment. The passenger of the vehicle entered the apartment, and shortly thereafter, Daniels emerged from the apartment and proceeded to a nearby stairwell. Daniels removed something from under the stairwell and returned to the apartment. A few minutes later, the passenger and Daniels emerged from the apartment. The passenger appeared to have something clutched in his fist, while Daniels was counting money in his hands. The pick-up truck then left. Detective Carter pulled the truck over after it left the complex. Daniels placed the item back under the stairwell and returned to the apartment. The substance found under the stairwell was tested and determined to be cocaine based.

I. THE TRIAL COURT COMMITTED PLAIN AND REVERSIBLE ERROR BY ALLOWING DETECTIVE ALVALINE BAGGETT TO RENDER EXPERT TESTIMONY BEFORE THE TRIAL JURY WITHOUT BEING OFFERED, TENDERED OR ACCEPTED AS AN EXPERT IN ANY FIELD IN VIOLATION OF RULE 702, MISSISSIPPI RULES OF EVIDENCE.

Daniels argues that the testimony of Detective Alvaline Baggett was expert testimony under Rule 702 of the Mississippi Rules of Evidence. Daniels argues that Baggett's testimony was precluded as a lay opinion because it was based upon her experience and training as a police officer. Daniels specifically claims that because Baggett's opinion was formulated based upon her training and specialized education in undercover narcotics work, she should have been tendered as an expert witness under Rule 702 of the Mississippi Rules of Evidence. This Court agrees that any response sought from a police officer based upon his training and experience, is of necessity an expert opinion. ***Sample v. State*, 643 So.2d 524, 530 (Miss.1994).**

However, the law is well settled in this state that the assertion on appeal of grounds for an objection which was not the assertion at trial does not properly preserve that issue for appeal. ***Ballenger v. State*, 667 So. 2d 1242, 1264 (Miss. 1995).** Nowhere in the record does Daniels object to Baggett's testimony as being an expert opinion. Daniels did make an objection as to the relevance of certain statements made by Baggett. Our supreme court has held that an appellant will not be allowed to argue for the first time on appeal, an objection different from that made at trial. ***Chase v. State*, 645 So. 2d 829, 835 (Miss. 1994); *Foster v. State*, 639 So. 2d 1263, 1270 (Miss. 1994).** This objection was not properly preserved, and we therefore decline to address it.

II. THE VERDICT OF THE TRIAL JURY AND THE SENTENCE IMPOSED BY THE COURT IS CONTRARY TO THE PRINCIPLES OF LAW AND AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE PRODUCED AT THE TRIAL.

Daniels alleges in his appeal that the overwhelming weight of the evidence is contrary to the jury's decision and that there was insufficient evidence to prove his guilt. These issues, although similar, are separate and distinct. As such, we will address both points separately. We first address the question of sufficiency.

It has been held that when one convicted of a criminal offense appeals to challenge the legal sufficiency of the evidence, the authority of an appellate court to interfere with the jury's verdict is quite limited. The supreme court has stated:

> [I]f there is in the record substantial evidence of such quality and weight that, having in mind the beyond a reasonable doubt burden of proof standard, reasonable and fair-minded jurors in the exercise of impartial judgment might have reached different conclusions, the verdict of guilty is thus placed beyond our authority to disturb.

McFee v. State*, 511 So. 2d 130, 133-34 (Miss. 1987)**(citing *Gavin v. State*, 473 So. 2d 952, 956 (Miss. 1985)). With that in mind, we must carefully weigh the record before us. In doing so we do not decide the credibility of witnesses anew, that is a function of the jury. We accept as fact those matters which support the verdict. McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993).**

The testimony of Detective Baggett and the testimony of Stephanie Chaffee and Joseph Daniels are in conflict. Baggett testified that she saw Daniels retrieve drugs from under the stairwell. Baggett also stated she saw Daniels counting a handful of money after a drug transaction. Daniels and Chaffee on the other hand testified that they were sitting on their car in front of their apartment and were not

involved in selling drugs. They testified that Robert Jones was the one who sold drugs. Chaffee testified that she never did drugs, had never seen a drug buy take place, and never told anyone that Daniels was innocent and that Robert Jones was guilty until the trial (two years after Daniels' arrest). This testimony was given after it was made clear that she was Daniels' girlfriend.

Detective Baggett also testified that Jones and Daniels had on different colored jogging suits. In response, Daniels testified that he and Jones looked alike, but eventually admitted that they were wearing completely different colored jogging suits. Robert Jones pled the Fifth Amendment in answer to all questions asked of him. The jury resolved the conflicts in testimony in favor of the State.

The standard of review for the legal sufficiency of the evidence is well-settled:

> [W]e must, with respect to each element of the offense, consider *all* evidence -- not just the evidence which supports the case for the prosecution -- in the light most favorable to the verdict. The credible evidence which is consistent with the guilt must be accepted as true. The prosecution must be given the benefit of all favorable inferences that may reasonably be drawn from the evidence. Matters regarding the weight and credibility to be accorded the evidence are to be resolved by the jury. We may 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.

***Franklin v. State*, 676 So. 2d 287, 288 (Miss. 1996)**(quoting *Wetz v. State*, So. 2d 803, 808 (Miss. 1987)(emphasis added).

This court finds no merit in Daniels' challenge as to the sufficiency of the evidence.

Daniels argues that the jury's decision was against the overwhelming weight of the evidence. We will not order a new trial "unless convinced that the verdict is so contrary to the evidence that, to allow it to stand, would be to sanction an unconscionable injustice." ***Groseclose v. State*, 440 So. 2d 297, 300 (Miss. 1983).** Daniels argues that there was no proof that he was the seller, and in fact, he even claims it was his brother, Robert Jones. This places a question of fact before the court, which was properly presented to the jury for decision. The record shows that Baggett was the officer who witnessed the alleged transactions. Baggett's testimony in court as to the identity of the seller (that it was Daniels and not Jones) is a question of witness credibility and fact. We have held that factual disputes are properly resolved by the jury. ***Temple v. State*, 498 So. 2d 379, 382 (Miss. 1986).**

It was for the jury to determine the weight accorded the testimony of each witness. The jury could, and apparently did, place great weight upon the testimony of the State's witnesses. Based upon a review of the record, this Court cannot disagree. The supreme court has held that a jury is the sole judge of the evidence, and its decision "will not be set aside where there is substantial and believable evidence." ***Billiot v. State*, 454 So. 2d 445, 463 (Miss. 1984).** Therefore, we affirm the conviction of Joseph Daniels.

THE JUDGMENT OF THE CIRCUIT COURT OF HINDS COUNTY OF CONVICTION OF POSSESSION OF COCAINE WITH INTENT TO DISTRIBUTE AND SENTENCE OF THIRTY YEARS AS AN HABITUAL OFFENDER IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. COSTS ARE TAXED TO

HINDS COUNTY.

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.