

**IN THE COURT OF APPEALS 12/12/95**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 94-KA-01207 COA**

**ROBERT EARL THOMAS**

**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:

STEPHEN A. BRANDON

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL BY: WAYNE SNUGGS

DISTRICT ATTORNEY: CLYDE HILL

NATURE OF THE CASE: CRIMINAL/ POSSESSION OF A CONTROLLED SUBSTANCE

TRIAL COURT DISPOSITION: CONVICTED AND SENTENCED TO SERVE A TERM OF  
EIGHTEEN (18) MONTHS IN THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

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

PER CURIAM:

Robert Earl Thomas was indicted and convicted of possession of cocaine. He was sentenced to serve a term of eighteen months in prison. On appeal, Thomas challenges the verdict as being against the overwhelming weight of the evidence.

Sergeant Walter Thomas testified that he was patrolling an area of Clarksdale when he noticed three young men standing near an automobile parked in a vacant lot. The men were standing on the passenger side of the vehicle. Sgt. Thomas claimed that the circumstances indicated that a drug sale was occurring. Sgt. Thomas stopped his vehicle and ordered Thomas and another male to kneel. Sgt. Thomas testified that while Thomas was kneeling, his hands were clinched into fists and were placed upon the trunk of the vehicle. Sgt. Thomas then ordered Thomas to open his hands. At that time, Sgt. Thomas claimed to have observed a "white rock substance" roll out of Thomas' hand. The white rock substance fell to the ground, and Sgt. Thomas reached down and picked it up. Sgt. Thomas also testified that he attended the preliminary hearing for the defendant and, during the hearing, the defendant was asked by counsel if he knew what he had in his hand. To this the defendant responded, "I knew it was cocaine I had in my hand." Police officer Oliver Mitchell testified that he also attended the preliminary hearing and heard the defendant state that he knew he had crack cocaine in his hand.

The defendant, Robert Earl Thomas, testified that his hands were closed because the weather was cool. Thomas testified that he did not have any cocaine that night and did not see Sgt. Thomas recover any. Thomas stated that if Sgt. Thomas found any cocaine, "it was not mine". He stated that after he was arrested and taken to the police station, Sgt. Thomas told him if he "snitched or turned informer" on drug dealers he would let him go. Thomas denied having any cocaine in his possession the night of the arrest and denied stating at the preliminary hearing that he had cocaine on his person. He claimed that he was only stating he knew what cocaine was but was not allowed to finish his answer.

Where, as here, the evidence for the State and defendant are in conflict, a classic jury issue is created. After reading the record, we find that the guilty verdict was not against the overwhelming weight of the evidence and the trial court, therefore, did not abuse its discretion in denying Thomas' motion for a new trial. Accordingly, we affirm Thomas' conviction.

**THE JUDGMENT OF THE COAHOMA COUNTY CIRCUIT COURT OF CONVICTION OF POSSESSION OF A CONTROLLED SUBSTANCE AND SENTENCE OF EIGHTEEN (18) MONTHS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. COSTS ARE ASSESSED AGAINST COAHOMA COUNTY.**

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

