

IN THE COURT OF APPEALS 09/03/96

OF THE

STATE OF MISSISSIPPI

NO. 94-KA-00742 COA

JUDGE CONNER

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. LESLIE HATCHER

COURT FROM WHICH APPEALED: COAHOMA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

JOHNNIE E. WALLS, JR.

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL\

BY: JOLÉNE M. LOWRY

DISTRICT ATTORNEY: LAURENCE Y. MELLEN

NATURE OF THE CASE: CRIMINAL: SALE AND POSSESSION OF COCAINE (SECOND
OFFENDER)

TRIAL COURT DISPOSITION: GUILTY VERDICT ON POSSESSION COUNT AND
ACQUITTAL OF SALE COUNT; SENTENCED TO 4 YRS IN PRISON AND FINED \$20,000.00

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

SOUTHWICK, J., FOR THE COURT:

The defendant, named Judge Conner, was convicted of possession of cocaine and sentenced to four years in prison. He appeals his conviction, challenging only the weight and sufficiency of the evidence. We affirm.

Conner's challenge rests on the premise that the jury erroneously rejected his story that the cocaine found on his person and in his car had been planted by the police. Our standard for reviewing challenges to convictions based on sufficiency of the evidence is well established. As to each element of the offense, we consider all of the evidence in the light most favorable to the verdict. We reverse when, with respect to an element of the offense charged, the evidence is such that reasonable and fair-minded jurors could only find the accused not guilty. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993). As to whether the verdict is contrary to the overwhelming weight of the evidence, a similar standard is employed. We view the evidence in the light most favorable to the verdict. The trial court is given discretion to order a new trial in the face of overwhelming evidence contrary to the jury's verdict in order to prevent an unconscionable injustice. *McClain*, 625 So. 2d at 781 (citation omitted).

Smith was charged with possession of cocaine under section 41-29-139 of the Mississippi Code of 1972. That section provides that "it is unlawful for any person knowingly or intentionally to . . . possess . . . any controlled substance . . ." Miss. Code Ann. § 41-29-139(c) (Supp. 1995). The prosecution has the burden of proving two elements: (1) knowing or intentional possession; and (2) that cocaine, a controlled substance, was the object of such possession. There was ample evidence to prove these elements.

Conner was arrested as a part of a police sting operation following an apparent drug deal in which he was involved. A confidential informant was given money by the police to use in the purchase of drugs, while he was subject to police surveillance. The informant found Conner by his car in front of a lounge and purchased a piece of rock cocaine from him. The informant returned to the police and turned over the cocaine. The entire transaction was watched by the police.

Within moments, Conner was apprehended where the sale had taken place. He was taken to the police station and asked to empty his pockets. When he complied, a small package was discovered containing what was later determined to be rock cocaine. Conner was also in possession of over \$900.00 in cash, including money identified as having been given to the informant. A search of Conner's car found more cocaine.

In light of this evidence, Conner's appeal is without merit. Conner provided no direct evidence to support his theory that evidence had been planted. In addition, the discrepancies in the testimony of the State's witnesses to which Conner points in support of his appeal do not affect the consistent testimony that Conner was found to be in possession of cocaine.

THE JUDGMENT OF CONVICTION OF THE CIRCUIT COURT OF COAHOMA COUNTY OF POSSESSION OF COCAINE AS A SECOND AND SUBSEQUENT OFFENDER AND SENTENCE OF FOUR (4) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, SENTENCE SHALL RUN

CONSECUTIVE TO ANY AND ALL SENTENCES PREVIOUSLY IMPOSED; AND WITH THE PAYMENT OF A FINE IN THE AMOUNT OF TWENTY THOUSAND DOLLARS (\$20,000.00) IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO APPELLANT.

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