IN THE COURT OF APPEALS 02/27/96

OF THE

STATE OF MISSISSIPPI

NO. 94-KA-00613 COA

LISA LOFTON

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. MARCUS D. GORDON

COURT FROM WHICH APPEALED: SCOTT COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

P. SHAWN HARRIS

ATTORNEY FOR APPELLEE:

OFFICE OF ATTORNEY GENERAL

BY: JEFFREY A. KLINGFUSS

DISTRICT ATTORNEY: KEN TURNER

NATURE OF THE CASE: CRIMINAL-SALE OF COCAINE

TRIAL COURT DISPOSITION: SENTENCED TO SERVE A TERM OF FIFTEEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND PAY A FINE OF FIVE THOUSAND DOLLARS

BEFORE FRAISER, C.J., BARBER, AND DIAZ, JJ.

PER CURIAM:

Lisa Lofton was convicted in the Scott County Circuit Court for the unlawful sale of cocaine. On appeal, Lofton challenges the sufficiency of the evidence by claiming that the trial court erred in refusing her motion for directed verdict and by not granting her peremptory instruction. She also contends that the verdict is contrary to the overwhelming weight of the evidence. Lofton's issues are without merit; therefore, we affirm.

"When the sufficiency of the evidence is challenged on appeal, this Court properly should review the Circuit Court's ruling on the last occasion when the sufficiency of the evidence was challenged before the trial court." *Wetz v. State*, 503 So. 2d 803, 807 n. 3 (Miss. 1987). In Lofton's case, the last challenge to the sufficiency of the evidence was made via her motion for a peremptory instruction. This court must determine whether the evidence in the record before the trial court at the time of this motion was sufficient to support the guilty 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." *Wetz*, 503 So. 2d at 808 (citations omitted).

A challenge to the weight of the evidence via a motion for a new trial implicates the trial court's sound discretion. *McClain v. State*, 625 So. 2d 774, 781 (Miss. 1993). New trial decisions rest in the sound discretion of the trial court and the motion should not be granted except to prevent an unconscionable injustice. We reverse only for abuse of discretion, and on review we accept as true all evidence favorable to the State. *Wetz* 503 So. 2d at 807-08.

The testimony adduced at trial reflects that both Officer Leon Williams and Petima Ealey, the confidential informant, identified Lofton as the person who sold two rocks of crack cocaine to Williams. Officer Nichols monitored the sale through a microphone and at trial identified the voice of the seller as Lofton's. Additional testimony described what Lofton was wearing at the time of the sale. Subsequent to the sale, Nichols also made a positive identification of Lofton as Lofton sat on the front porch of the house where she sold Williams the cocaine.

The jury is charged with the responsibility of weighing and considering the conflicting evidence and credibility of the witnesses. *Lewis v. State*, 580 So. 2d 1279, 1288 (Miss. 1991). Viewing the evidence in the light most favorable to the verdict, we cannot say that the jury reached the wrong verdict. The trial court did not abuse its discretion in denying Lofton's challenge to the sufficiency of the evidence nor in denying her motion for a new trial. We are not persuaded that the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would be to sanction an unconscionable injustice. *Wetz*, 503 So. 2d at 812.

The judgment of the trial court is affirmed.

THE JUDGMENT OF THE CIRCUIT COURT OF SCOTT COUNTY OF CONVICTION OF SALE OF COCAINE AND SENTENCE OF FIFTEEN (15) YEARS IN THE CUSTODY

OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND FINE OF FIVE THOUSAND DOLLARS ($5,000) IS AFFIRMED. COSTS OF APPEAL ARE TAXED TO SCOTT COUNTY.

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