

**IN THE COURT OF APPEALS 03/12/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 94-KA-00473 COA**

**BOBBY GAINES**

**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. ROBERT WALTER BAILEY

COURT FROM WHICH APPEALED: WAYNE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

RANDALL L. MILLER

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL:

BY DEWITT ALLRED III

DISTRICT ATTORNEY: BILBO MITCHELL

NATURE OF THE CASE: CRIMINAL: DELIVERY OF COCAINE WITHIN 1000 FEET OF A  
SCHOOL

TRIAL COURT DISPOSITION: GUILTY VERDICT AND SENTENCED TO 20 YEARS IN  
M.D.O.C. AND A FINE OF \$2,000.00, \$100.00 LAB FEES, AND \$188.00 OTHER COSTS

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

PER CURIAM:

The Appellant, Bobby Gaines (Gaines), was convicted in the Wayne County Circuit Court for the delivery of cocaine within one thousand (1,000) feet of school property. Gaines was sentenced to serve twenty (20) years in the Mississippi Department of Corrections, to pay a two thousand dollar (\$2,000) fine and to pay court costs. On appeal, Gaines asserts that the trial court erred in admitting

a photograph of Gaines into evidence, and that the conviction was against the overwhelming weight of the evidence. Finding no merit to either of the issues, we affirm.

Rule 901 of the Mississippi Rules of Evidence states that "authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." M.R.E. 901. The rule allows authentication by testimony of a witness with knowledge. *Id.* There is no requirement that the photographer testify where there is other competent testimony that the photograph represents what it purports to be. *Jackson v. State*, 483 So. 2d 1353, 1355 (Miss. 1986). In this instance, the undercover narcotics officer identified the photograph of Gaines as the person who had sold him the cocaine. Furthermore, the photograph at issue is not a mug shot, and it does not indicate any prior criminal activity. The reason why mug shots are inadmissible is neither apparent nor present in this photograph. *Hewlett v. State*, 607 So. 2d 1097, 1103 (Miss. 1992).

Our standard of review for considering directed verdicts is well established. On review, this Court must consider the evidence in the light most favorable to the State, accepting all the evidence introduced by the State as true, together with all reasonable inferences therefrom. If there is sufficient evidence to support a guilty verdict, the motion for a directed verdict must be overruled. *Robinson v. State*, 662 So. 2d 1100, 1105 (Miss. 1995). We will not order a new trial "unless convinced 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." *Id.* (citations omitted). We find that there is sufficient evidence to support this verdict.

**THE JUDGMENT OF CONVICTION OF THE WAYNE COUNTY CIRCUIT COURT OF DELIVERY OF COCAINE WITHIN ONE THOUSAND (1,000) FEET OF A SCHOOL AND SENTENCE OF TWENTY (20) YEARS IN THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND PAY TWO THOUSAND DOLLARS (\$2,000) FINE AND LAB COSTS ARE AFFIRMED. COSTS OF THIS APPEAL ARE TAXED TO WAYNE COUNTY.**

**FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING,**

**McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.**