

**IN THE COURT OF APPEALS 12/03/96**  
**OF THE**  
**STATE OF MISSISSIPPI**  
**NO. 95-KA-00646 COA**

**ULYSSES C. SMITH a/k/a "TIN MAN"**

**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. KEITH STARRETT

COURT FROM WHICH APPEALED: PIKE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

EDWIN L. BEAN, JR.

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL BY: DEWITT ALLRED III

DISTRICT ATTORNEY: DUNN LAMPTON

NATURE OF THE CASE: POSSESSION OF COCAINE

TRIAL COURT DISPOSITION: UNLAWFUL POSSESSION OF COCAINE: SENTENCED AS A  
HABITUAL FOR 6 YRS WITHOUT BENEFIT OF PROBATION, PAROLE, GOOD TIME, OR  
EARLY RELEASE; PAY A FINE OF \$30,000.00 AND COURT COSTS; SENTENCE TO RUN  
CONSECUTIVE TO ANY OTHER SENTENCES IMPOSED.

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

THOMAS, P.J., FOR THE COURT

Ulysses C. Smith appeals his conviction of possession of cocaine, raising the following issues as error:

**I. WHETHER THE TRIAL COURT ERRED IN ALLOWING THE PROSECUTION TO USE THROUGHOUT THE COURSE OF TRIAL ULYSSES C. SMITH'S "STREET NAME," "TIN MAN"?**

**II. WHETHER THE VERDICT OF THE JURY WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE?**

Finding no error, we affirm.

#### FACTS

On October 24, 1994, Ulysses C. Smith (Smith) and his nephew, Caprice Pittman (Pittman), were standing on the corner of St. Augustine and Summit Street in McComb, Pike County, Mississippi, drinking beer. Three police officers, riding in two patrol cars, stopped to ask some questions. Officers Mark Shepherd (Shepherd) and Michael Roberts (Roberts) were in one car and stopped near Smith and Pittman. Officer Rodney Nordstrom (Nordstrom) was in another car and stopped a moment later.

Shepherd testified that when he approached Smith, Smith and Pittman turned and walked in the opposite direction. Nordstrom testified that he saw Smith place something in a bush and then turn and walk down the sidewalk. Nordstrom testified that he retrieved a matchbox out of the bush containing what appeared to be crack cocaine. Witnesses for Smith testified that they did not see Smith place anything in the bush, and Pittman testified that he was the one who threw a matchbox in the bush.

#### ANALYSIS

##### I.

**WHETHER THE TRIAL COURT ERRED IN ALLOWING THE PROSECUTION TO USE THROUGHOUT THE COURSE OF TRIAL ULYSSES C. SMITH'S "STREET NAME," "TIN MAN"?**

Smith argues that the trial court erred in allowing the State to use his "street name," "Tin Man" before the jury because the information was highly prejudicial and outweighed any probative value that it could possibly have had. Smith states that it is a common and well-known fact by the public that individuals who are involved in trafficking illegal drugs often go by a name other than their real names, or a "street name." Also, that the public is aware that law enforcement officers who frequently contact an individual will label or place a "street name" on that individual because of his

characteristics and their frequent contact with that individual.

The defense, on the day of trial, made an oral motion in limine to prohibit the State, through the prosecutor or any of the State's witnesses, from mentioning Smith by his "street name." The court sustained the motion insofar as the judge determined that it did not have any probative value, however, he stated that Smith's "street name" might be necessary in proof. The court instructed the State to ask its witnesses if Smith was known by any other "nickname."

The prosecution asked its witnesses if they knew Smith, also referred to by a nickname "Tin Man," when asked to identify the defendant. The defense witnesses called Smith "Tin Man" twice. There was no reference to this as a "street name"; the State always called it a nickname.

"Relevancy and admissibility of evidence are largely within the discretion of the trial court and this Court will reverse only where that discretion has been abused." *Hentz v. State*, 542 So. 2d 914, 917 (Miss. 1989) (citations omitted); *see also Stromas v. State*, 618 So. 2d 116, 119 (Miss. 1993); *Butler v. State*, 592 So. 2d 983, 986 (Miss. 1991). The probative value of this evidence had the tendency to corroborate the witnesses' identification of Smith. The evidence that Smith was known as "Tin Man," not just to the police but to others who testified in this case, was a "neutral fact not likely to excite the jurors in any way prejudicial" to Smith. *Whitehurst v. State*, 540 So. 2d 1319, 1324 (Miss. 1989). Because the information was relevant, to establish the identity of this Defendant, it was admissible. This issue has no merit.

## I.

### **WHETHER THE VERDICT OF THE JURY WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE?**

Smith argues that the jury's verdict was against the overwhelming weight of the evidence because the witnesses' testimony about whether Smith dropped the matchbox in a bush, contradicted each other.

When reviewing a jury verdict of guilty we are required to accept as true all the evidence favorable to the State, together with reasonable inferences arising therefrom, to disregard the evidence favorable to the defendant, and if such will support a verdict of guilty beyond reasonable doubt and to the exclusion of every reasonable hypothesis consistent with innocence, then the jury verdict shall not be disturbed.

*Montgomery v. State*, 515 So. 2d 845, 848 (Miss. 1987) (citing *Hester v. State*, 463 So. 2d 1087, 1091 (Miss. 1985); *Carroll v. State*, 396 So. 2d 1033, 1035 (Miss. 1981)).

The Mississippi Supreme Court has held that "[t]he jury has the duty to determine the impeachment value of inconsistencies or contradictions as well as testimonial defects of perception, memory and sincerity." *Noe v. State*, 616 So. 2d 298, 303 (Miss. 1993) (quoting *Jones v. State*, 381 So. 2d 983, 989 (Miss. 1990)).

The Jury is the sole judge of the credibility of the witnesses and the weight and worth of their testimony. They may believe or disbelieve, accept or reject the utterance of any witness. It is not our function to determine whose testimony to believe. We will not disturb a jury's finding on conflicting testimony where there is substantial evidence to

support the verdict.

*Pinson v. State*, 518 So. 2d 1220, 1224 (Miss. 1988) (citations omitted).

This Court will not order a new trial unless a defendant convinces us 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." *Noe v. State*, 628 So. 2d 1368, 1369 (Miss. 1993) (quoting *Wetz v. State*, 503 So. 2d 803, 812 (Miss. 1987)).

Smith asserts that there was insufficient evidence to convict him of possession of cocaine. However, the jury had sufficient evidence to convict Smith of the crime charged. Though Nordstrom's testimony conflicted with the testimony of other witnesses, his testimony was sufficient to support the verdict. The jury's primary function is to judge the credibility of witnesses, and it obviously believed that Smith was the person who had dropped the matchbox containing cocaine. The jury's verdict was not against the overwhelming weight of the evidence.

**THE JUDGMENT OF THE CIRCUIT COURT OF PIKE COUNTY OF CONVICTION OF UNLAWFUL POSSESSION OF COCAINE AND SENTENCE AS AN HABITUAL OFFENDER FOR SIX YEARS TO RUN CONSECUTIVELY TO ANY OTHER SENTENCES, IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, AND FINE OF \$30,000.00 IS AFFIRMED. ALL COSTS ARE ASSESSED TO ULYSSES C. SMITH.**

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