

**IN THE COURT OF APPEALS 08/20/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 95-KA-00214 COA**

**ALBERT JAMES WATTS**

**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. LARRY EUGENE ROBERTS

COURT FROM WHICH APPEALED: CLARKE COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT:

RANDALL MILLER, EDWARD KRAMER

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: SCOTT STUART

DISTRICT ATTORNEY: BILBO MITCHELL

NATURE OF THE CASE: CRIMINAL - SALE OF COCAINE

TRIAL COURT DISPOSITION: CONVICTED OF SALE OF COCAINE AND SENTENCED AS  
A HABITUAL OFFENDER TO LIFE WITHOUT CHANCE FOR PAROLE IN THE CUSTODY  
OF THE M.D.O.C.

BEFORE BRIDGES, P.J., KING, AND McMILLIN, JJ.

## BRIDGES, P.J., FOR THE COURT:

Albert James Watts was convicted of delivery of cocaine and was sentenced as a habitual offender to a term of life without parole in the custody of the Mississippi Department of Corrections. Watts argues on appeal that the verdict was against the overwhelming weight of the credible evidence and asks this Court to set aside the jury's verdict and grant a new trial. Finding no merit in Watts' appeal, we affirm the decision of the lower court.

## THE FACTS

Prior to March 24, 1993, the home of Edie Watts in Clarke County, Mississippi, had been under surveillance due to possible drug activity. On March 24, 1993, Homer Kemp, Jimmy Kirkman, and Joey Waller, all working with the Wayne-Clarke-Jasper Narcotics Task Force, met to plan an undercover drug purchase from the home of Edie Watts. After being wired for sound and given \$40.00 for the purchase, Kemp proceeded to the home of Edie Watts. Waller and Kirkman listened to the radio transmission of the purchase from a nearby parked vehicle.

Upon arriving at the home of Edie Watts and stepping out of his vehicle, Kemp was approached by Richard Watts. Kemp asked Richard Watts if he had any crack cocaine. Richard Watts then walked over and said something to Albert Watts, who was also standing in the yard. Richard Watts, Albert Watts, and Kemp then walked toward a trailer that was on the property. While Richard Watts and Kemp walked inside the trailer, Albert Watts walked behind the trailer. Shortly thereafter, Albert Watts joined Richard Watts and Kemp in the trailer.

Inside the trailer, Albert Watts displayed for Kemp a piece of crack cocaine purportedly worth \$50.00. After examining the crack cocaine, Kemp stated that he only had \$40.00. Albert Watts then pinched off part of the crack cocaine, thereby reducing its value, and handed the smaller piece to Richard Watts. Albert Watts then exchanged the remaining piece of crack cocaine for Kemp's \$40.00. After exiting the trailer and leaving the property, Kemp met with Waller and Kirkman where he turned over the crack cocaine and the surveillance equipment.

On April 12, 1993, Kemp was shown fifty or sixty photographs by Joey Waller. Kemp picked the photograph of Albert Watts as the man who had sold him crack cocaine on the day of March 24, 1993. Kemp also identified Albert Watts at trial as the man who sold him crack cocaine.

## ARGUMENT AND DISCUSSION OF THE LAW

### I. WHETHER THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

On appeal, Watts contends that the verdict is against the overwhelming weight of the evidence, yet the thrust of his argument appears to be an attack on the sufficiency of the evidence supporting his conviction. The relief is different in each case. A verdict against the weight of the evidence entitles the defendant to a new trial. A verdict based upon insufficient evidence entitles the defendant to a discharge. We have, therefore, elected to consider both aspects of the evidence in support of the conviction.

Appeals from an overruled JNOV motion are viewed by this Court in a light most favorable to the State. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993). Any credible evidence consistent with guilt must be accepted as true. *McClain*, 625 So. 2d at 778. A challenge to the sufficiency of the evidence can result in a reversal only where the evidence, with respect to one or more of the elements of the offense charged, is such that reasonable and fair-minded jurors could only find the accused not guilty. *Id.* at 778.

On the other hand, where the defendant contends that a new trial should have been granted because the jury verdict was against the weight of the evidence, the standard of review is as follows:

The challenge to the weight of the evidence via motion for a new trial implicates the trial court's sound discretion. Procedurally such challenge necessarily invokes [Mississippi Uniform Criminal Rule of Circuit Court Practice] 5.16. 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.

*Id.* at 781. All matters concerning the weight and credibility of the evidence are resolved by the jury. *Id.*

In a case cited by Watts in his brief, the Supreme Court of Mississippi eloquently condensed the above standard stating:

[O]nce the jury has returned a verdict of guilty in a criminal case, we are not at liberty to direct that the defendant be discharged short of a conclusion on our part from that the evidence, taken in the light most favorable to the verdict, no reasonable, hypothetical juror could find beyond a reasonable doubt that the defendant was guilty.

*Williams v. State*, 463 So. 2d 1064, 1068 (Miss. 1985).

Keeping in mind the above standards, we find no merit in Watts' appeal. Kemp identified Watts as the man who sold him crack cocaine. It was well within the province of the jury to believe that Kemp's out-of-court identification of Albert Watts was proper and accurate. Furthermore, Watts has also failed to show, other than by innuendo, any problems with the photographic array shown to Kemp.

The record reflects that in addition to the out-of-court identification, Kemp also made a clear,

unequivocal in-court identification of Watts. Watts waived any objection by failing to object to this identification at trial. *Fleming v. State*, 604 So. 2d 280, 302 (Miss. 1992). Accordingly, we find Watts' challenge to the evidence supporting his conviction, whether seen as an attack on the weight or its sufficiency, is without merit.

**THE JUDGMENT OF THE CLARKE COUNTY CIRCUIT COURT OF CONVICTION OF DELIVERY OF COCAINE AND SENTENCE AS A HABITUAL OFFENDER TO LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO CLARKE COUNTY.**

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