

IN THE COURT OF APPEALS

7/29/97

OF THE

STATE OF MISSISSIPPI

NO. 95-KA-01365 COA

ZACHARY LINZY 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. JOHN LESLIE HATCHER

COURT FROM WHICH APPEALED: TUNICA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: ALLAN D. SHACKELFORD

ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL

BY: BILLY L. GORE

DISTRICT ATTORNEY: LAWRENCE MELLEN

NATURE OF THE CASE: POSSESSION OF CONTROLLED SUBSTANCE WITH INTENT TO SELL

TRIAL COURT DISPOSITION: GUILTY: SENTENCED TO 16 YRS; 8 YRS SUSPENDED; SUSPENSION TO COMMENCE AFTER SERVING 8 YRS; PAY \$1,000.00 FINE; SENTENCE TO RUN CONSECUTIVE TO ANY PREVIOUSLY IMPOSED (SEE OTHER

MANDATE ISSUED: 8/19/97

BEFORE THOMAS, P.J., DIAZ, AND PAYNE, JJ.

PER CURIAM:

Zachary Linzy (Linzy), the appellant, was tried and convicted in the Tunica County Circuit Court for the possession of cocaine with the intent to sell. Linzy was sentenced to serve sixteen years in the Mississippi Department of Corrections with eight years suspended. He was also ordered to pay \$1,000. Aggrieved, Linzy appeals the judgment claiming that the verdict was against the overwhelming weight of the evidence.FACTS

On March 28, 1995, after a trip to Memphis, Linzy and two friends were headed back to Clarksdale, Mississippi when they were pulled over by Trooper Lori Cusick apparently for speeding. Cusick testified that as she got out of her car, she noticed Linzy, who was in the front passenger seat, lean over and open the door approximately four to five inches. After asking for the driver's license, Cusick noticed that both the driver and the front passenger, Linzy seemed nervous. Cusick asked Linzy to step out of the car. Initially, Linzy denied throwing anything out of the car, but when Cusick shined her flashlight under the car, she saw two plastic bags. When she handcuffed Linzy and put him in the back of the patrol car, Linzy said "That was the guy's in the backseat. That was his stuff." After radioing for assistance, Cusick handcuffed the driver, as well as the rear passenger. At that point, two other patrol cars arrived at the scene and each subject was placed in a separate patrol car. Linzy was read his *Miranda* warnings and taken into the Sheriff's Office.

After arriving at the Sheriff's Office, and giving an initial statement, Linzy asked to talk to Alvin Howard, who was the driver of the vehicle. After speaking with Howard, Linzy admitted to Cusick that the cocaine was his. Linzy then gave a signed statement admitting the same.

#### DISCUSSION

#### WEIGHT OF EVIDENCE

Linzy's sole argument on appeal is that the verdict was against the overwhelming weight of the

evidence. Our standard of determining whether a jury verdict is against the overwhelming weight of evidence is well settled. We must accept as true the evidence which supports the verdict. *Robinson v. State*, 662 So. 2d 1100, 1104 (Miss. 1995). We will only reverse where the trial court abused its discretion in not granting a new trial. *Id.* Considering the facts in the instant case, we find no reversible error.

**THE JUDGMENT OF CONVICTION IN THE TUNICA COUNTY CIRCUIT COURT OF POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO SELL AND SENTENCE OF SIXTEEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH EIGHT YEARS SUSPENDED AND PAYMENT OF \$1000 FINE IS AFFIRMED. SENTENCE TO RUN CONSECUTIVELY TO ANY AND ALL SENTENCES PREVIOUSLY IMPOSED. COSTS OF THIS APPEAL ARE TAXED TO TUNICA COUNTY.**

**BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.**