

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-KA-00233 COA**

MARILYN RASH

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

DATE OF JUDGMENT:	04/19/96
TRIAL JUDGE:	HON. KENNETH LEVENE THOMAS
COURT FROM WHICH APPEALED:	COAHOMA COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	ALLAN D. SHACKELFORD
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: OFFICE OF THE ATTORNEY GENERAL BY: JEAN SMITH VAUGHAN
DISTRICT ATTORNEY:	LAWRENCE Y. MELLEN
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	SALE OF A CONTROLLED SUBSTANCE, TO-WIT COCAINE: SENTENCED TO SERVE A TERM OF 7 YRS IN THE MDOC& PAY A FINE OF \$1,000.00
DISPOSITION:	AFFIRMED - 11/4/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	11/25/97

BEFORE THOMAS, P.J., HINKEBEIN AND KING, JJ.

PER CURIAM.

Marilyn Rash was convicted of the sale of a controlled substance and was sentenced to seven years in the custody of the Mississippi Department of Corrections and ordered to pay a fine of \$1,000. On appeal to this Court, Rash contends that the verdict of the jury was against the overwhelming weight of the evidence.

On July 30, 1995, Broderick Mosely, a confidential informant for the Clarksdale Police Department, was walking along Monroe Street in Clarksdale, Mississippi when he saw Marilyn Rash sitting in

front of a white house located at 338 Madison Street. Mosely asked Rash if she knew where Mosely could buy some crack cocaine. Rash stated that she could. To maintain his cover, Mosely told Rash that he would return after getting money owed him from his father.

Mosely then walked to the Clarksdale Police Department for a pre-buy meeting with Officer Oliver Lee Mitchell, Officer Newton and Officer Lane. After searching Mosely and removing his personal items, Officer Mitchell placed a transmitter on Mosely to enable the police officers to monitor the drug transaction from a safe distance in an unmarked Blazer. A backup tape recorder was placed in Mosely's pocket. Mosely was given five twenty-dollar bills to make the purchase.

Mosely testified that he returned to 338 Madison. He showed Rash three twenty-dollar bills. Rash left and went to the alley behind the house. Rash was gone less than a minute and returned with three white rocks of crack cocaine weighing 0.51 grams. Mosely handed Rash the three twenty-dollar bills in exchange for the crack cocaine. Although the conversation between Mosely and Rash is not clear on the transmitted recording, Mosely testified that Rash identified herself as Marilyn Rash. The tape made by the backup tape recorder was inadvertently erased or malfunctioned. One other person was present in the house at the time of the sale but was not in the same room.

After the transaction was complete, Mosely returned to the Clarksdale Police Department and gave the purchased cocaine to Officer Mitchell. Officer Mitchell sealed the cocaine in a marked bag and handed the bag to Officer Milton Williams for placement in the evidence locker. Mosely's testimony is corroborated by Officer Mitchell.

Rash testified she arranged the purchase of crack cocaine for Mosely but that Mosely handed the money to the drug dealer. Rash further testified Mosely gave her a portion of one rock in return for arranging the purchase of the cocaine.

The jury was instructed that they could find Rash guilty of the lesser crime of possession of a controlled substance, but the jury found Rash guilty of the sale of a controlled substance. Under Miss. Code Ann. § 41-29-139(a)(1) (Rev. 1993), Rash is guilty of the sale or transfer of a controlled substance if she is personally present at a drug transaction and aids and abets the sale even if she never has control of the drug and receives no remuneration or consideration. *Minor v. State*, 482 So. 2d 1107, 1111-1112 (Miss. 1986); *Johnson v. State*, 642 So. 2d 924, 927 (Miss. 1994). According to her testimony, Rash went with Mosely to buy the cocaine, introduced Mosely to the drug dealers, remained with Mosely while the transaction took place, and accepted a portion of one rock for her participation. The evidence is sufficient to establish that Rash substantially and knowingly participated "in the consummation of a sale or in arranging for the sale" of cocaine to Mosely. *Johnson*, 642 So. 2d at 928.

The jury had Mosely's testimony, the taped conversation between Mosely and Rash, the corroborating testimony of Officer Mitchell and the testimony of Rash from which they could find that Rash sold cocaine, a Schedule II controlled substance, to Mosely in violation of Miss. Code Ann. § 41-29-115(A)(a)(4) (Rev. 1993).

Under the facts stated by Mosely or Rash, the result is the same. The jury's verdict is supported by the evidence.

This Court will not reverse a jury verdict and order a new trial unless it is convinced that the verdict was contrary to the overwhelming weight of the evidence and that to allow it to stand would sanction an unconscionable injustice. *Johnson*, 642 So. 2d at 928. "In determining whether a jury verdict is against the overwhelming weight of the evidence . . . this Court must accept as true the evidence which supports the verdict and will reverse only when convinced that the trial court has abused its discretion in failing to grant a new trial. Any factual disputes are properly resolved by the jury and do not mandate a new trial." *Id.* (citations omitted).

THE JUDGMENT OF THE CIRCUIT COURT OF COAHOMA COUNTY OF CONVICTION OF SALE OF A CONTROLLED SUBSTANCE AND SENTENCE OF SEVEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND FINE OF \$1,000 IS AFFIRMED. SENTENCE TO RUN CONSECUTIVE TO ANY AND ALL SENTENCES PREVIOUSLY IMPOSED. ALL COSTS OF APPEAL ARE ASSESSED TO COAHOMA COUNTY.

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