

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 95-KA-01169 COA**

CARLOS DEVON YOUNG

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

DATE OF JUDGMENT:	11/06/95
TRIAL JUDGE:	HON. KEITH STARRETT
COURT FROM WHICH APPEALED:	PIKE COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	CHARLES MILLER
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: BILLY L. GORE
DISTRICT ATTORNEY:	DUNN LAMPTON
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	UNLAWFUL POSSESSION OF COCAINE WITH INTENT TO DISTRIBUTE: SENTENCED INTO THE CUSTODY OF MDOC FOR 20 YRS; THE LAST 5 YRS SUSPENDED & PLACED ON PROBATION FOR 5 YRS; DEFENDANT IS TO GET A GED, PAY A FINE OF \$10,000 & COURT COSTS
DISPOSITION:	AFFIRMED - 12/16/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	2/4/98

BEFORE BRIDGES, C.J., PAYNE, KING AND SOUTHWICK, JJ.

KING, J., FOR THE COURT:

Carlos Devon Young was convicted of possession of cocaine with intent to distribute in the Pike County Circuit Court and sentenced to serve a term of twenty-five years, with five years suspended, in the custody of the Mississippi Department of Corrections. On appeal, Young assigns the following

three errors:

- (1) The court erred in denying the Motion to Suppress in that the officers' search extended beyond the scope of the warrant and the search warrant was not supported by probable cause.**
- (2) The court erred in failing to grant the Motion for Directed Verdict where the state failed to prove possession with intent to distribute.**
- (3) The state failed to prove constructive possession of a controlled substance, therefore, the defendant cannot be guilty of the lesser included offense of possession.**

Finding no error, we affirm the circuit court's judgment.

FACTS

On July 9, 1995, McComb police officers, pursuant to a search warrant, searched the residence of Young and his mother. Young was not present at the time of the search. With the assistance of narcotics sniffing dogs, the officers seized the following items from Young's bedroom: five packages of cocaine weighing approximately seventy-two grams, two sets of weighing scales, approximately \$5,000 in cash, a polaroid photograph depicting Jones holding a package which contained a white substance, a federal tax return, several Mississippi vehicle titles in Young's name and other items.

After the search and seizure, Young was arrested and subsequently indicted for possession of cocaine with intent to distribute. At trial, his motion to suppress evidence based on an invalid search warrant and motion for directed verdict were denied. The jury convicted Young, and he was sentenced to a term of twenty-five years with five years suspended. Young now appeals his conviction and sentence.

ISSUES

I. THE COURT ERRED IN DENYING THE MOTION TO SUPPRESS IN THAT THE OFFICERS' SEARCH EXTENDED BEYOND THE SCOPE OF THE WARRANT AND THE SEARCH WARRANT WAS NOT SUPPORTED BY PROBABLE CAUSE.

Young argues first on appeal that the search warrant was not supported by probable cause and the seized photographs, tax return, and automobile titles extended beyond the scope of the search warrant. We find that the search warrant was supported by probable cause. Due to Young's failure to object in the trial court regarding items extending beyond the scope of the search, we only address the portion of Young's argument concerning probable cause.

"[O]ur task, as reviewing court, is to insure that the issuing magistrate had a substantial basis for concluding that probable cause existed for issuance of the search warrant." *Petti v. State*, **666 So.2d 754, 757 (Miss.1995)**. The record reveals that an informant told one of the officers that he could purchase cocaine from Young. After the tip, the officer made arrangements for the informant to purchase cocaine at Young's residence while he conducted surveillance of the purchase. The informant came out of Young's residence with a quarter ounce of cocaine and the change from the amount given to him to purchase the cocaine. The officer testified at the suppression hearing that although he did not know the criminal background of the informant nor the extent of the informant's experience as a witness in court, he had used the informant in the past and found him to be reliable.

The aforementioned facts were stated in affidavits supporting the search warrant. We find that these facts provided a substantial basis for the magistrate's determination that probable cause existed.

II. THE COURT ERRED IN FAILING TO GRANT THE MOTION FOR DIRECTED VERDICT WHERE THE STATE FAILED TO PROVE POSSESSION WITH INTENT TO DISTRIBUTE.

Young argues that the trial court erred in denying the motion for directed verdict because the state failed to prove the elements of possession with intent to distribute. We disagree. The supreme court has held that intent to distribute can be proved by "possession of a large quantity of a controlled substance which by size was far more than a person might reasonably hold for exclusive personal use." *Boches v. State*, 506 So.2d 254, 260 (Miss.1987). Also, "additional incriminating evidence indicating some type of involvement in the drug trade" is relevant on the issue of intent to distribute. *Id.*

The officers seized an extremely large quantity of cocaine, two scales, a large sum of money, other items associated with the drug trade, and pictures. Considering the nature of the items seized, Young's sale of cocaine to the informant, and the fact that the amount of seized cocaine far exceeded that normally held for personal use, we find that the evidence presented by the State was overwhelmingly sufficient to establish possession with intent to distribute. The trial judge did not abuse his discretion in failing to grant a directed verdict. This argument is too, without merit.

III. THE STATE FAILED TO PROVE CONSTRUCTIVE POSSESSION OF A CONTROLLED SUBSTANCE, THEREFORE, THE DEFENDANT CANNOT BE FOUND GUILTY OF THE LESSER INCLUDED OFFENSE OF POSSESSION.

Young argues that the State did not prove constructive possession. In *Cunningham v. State*, 583 So.2d 960, 962 (Miss.1991), our supreme court held that constructive possession can be shown by establishing dominion, control, or by other incriminating circumstances. The record reveals that the seized items, some of which displayed Young's name, were retrieved from Young's residence in Young's bedroom. Given the incriminating circumstances in this case, (1) a tip by an informant, (2) an arranged purchase and (3) surveillance of that purchase, we find that the state presented sufficient evidence to establish a finding of constructive possession. We affirm the circuit court's judgment.

THE JUDGMENT OF THE PIKE COUNTY CIRCUIT COURT OF CONVICTION POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DISTRIBUTE AND SENTENCE OF TWENTY YEARS, WITH FIVE YEARS SUSPENDED IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND TO PAY A FINE OF \$10,000, IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.

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