

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 95-KA-01011 COA**

ANDRE TURNER

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:	09/18/95
TRIAL JUDGE:	HON. ROBERT G. EVANS
COURT FROM WHICH APPEALED:	SIMPSON COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	JOHN E. JACKSON
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: DEWITT T. ALLRED, III
DISTRICT ATTORNEY:	FORTENBERRY, DEWITT L., JR.
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	TRANSFER OF COCAINE: SENTENCED TO SERVE A TERM OF 10 YRS IN THE MDOC: THE 10 YR SENTENCE IMPOSED IN THIS CAUSE SHALL RUN CONSECUTIVELY WITH THE 10 YR SENTENCE IMPOSED IN SIMPSON COUNTY CIRCUIT CAUSE NO. 8887
DISPOSITION:	AFFIRMED - 12/16/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	2/4/98

BEFORE BRIDGES, C.J., DIAZ, AND COLEMAN, JJ.

BRIDGES, C.J., FOR THE COURT:

Andre Turner was indicted, tried, and convicted of the crime of transfer of cocaine in the Simpson County Circuit Court. He was sentenced to serve a term of ten years in the custody of the Mississippi Department of Corrections. He presents the following issues on appeal: 1) that inconsistencies in the testimony of the State's witnesses impeached their credibility and raised a reasonable doubt, and 2) that the jury verdict was against the overwhelming weight of the evidence and was manifestly erroneous. Finding no error, we affirm.

FACTS

On October 15, 1993, a confidential informant, Tony Edwards, made a controlled buy of cocaine from the defendant, Andre Turner. Edwards had met with the deputy sheriff earlier where Edwards's person and vehicle were searched, and he was fitted with a body transmitter so all activities and conversations could be recorded. The deputy sheriff gave Edwards \$100 to make the purchase and they both left. Edwards then met with Turner, and the two got into a vehicle and drove to a house. Turner proceeded to get out of the vehicle and walked over to a gray Nissan that was parked in a driveway. Turner opened the trunk, got something out, and then returned to Edwards's car. Turner gave Edwards the cocaine and he paid Turner \$100. Edwards left and returned to where he had met the deputy sheriff earlier and gave him the cocaine. Turner was subsequently arrested and convicted of the crime of sale of cocaine and was sentenced to ten years in the custody of the Mississippi Department of Corrections.

ARGUMENT AND DISCUSSION OF LAW

I. WHETHER INCONSISTENCIES IN THE TESTIMONY OF THE STATE'S WITNESSES IMPEACHED THEIR CREDIBILITY AND RAISED A REASONABLE DOUBT.

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

Turner's two issues challenge the sufficiency of the evidence. Turner contends that the State's case was based on the testimony of a "lying admitted drug abuser with a monetary incentive to lie or fabricate." He argues that the inconsistent testimony questioned the informant's credibility and thus, raised a reasonable doubt. We disagree.

The standard of review for challenges to the sufficiency of the evidence is set forth in *McClain v. State*:

The three challenges by McClain (motion for directed verdict, request for peremptory instruction, and motion for JNOV) challenge the legal sufficiency of the evidence. Since each requires consideration of the evidence before the court when made, this Court properly reviews the ruling on the last occasion the challenge was made in the trial court. This occurred when the Circuit Court overruled McClain's motion for JNOV. In appeals from an overruled motion for JNOV the sufficiency of the evidence as a matter of law is viewed and tested in a light most favorable to the State. The credible evidence consistent with McClain's guilt must be accepted as true. The prosecution must be given the benefit of all favorable inferences that may be reasonably drawn from the evidence. Matters regarding the weight and credibility of the evidence are to be resolved by the jury. We are authorized to reverse only where, with respect to one or more of the elements of the offense charged, the evidence so considered is such that reasonable and fair-minded jurors could only find the accused not guilty.

McClain v. State, 625 So. 2d 774, 778 (Miss. 1993). We review the ruling on the last occasion the challenge was made. The State failed to examine the record and argued that this Court should rule on the trial court's denial of the motion for judgment notwithstanding the verdict and the motion for new

trial. This is incorrect. Turner's last challenge was his motion for a directed verdict. Additionally, Turner argues that the testimony of the State's witnesses was inconsistent and lacked any indicia of reliability. The Mississippi Supreme Court has held that the 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, 302 (Miss. 1993)(citing *Jones v. State*, 381 So. 2d 983, 989 (Miss. 1980)). In *Evans v. State*, 159 Miss. 561, 132 So. 563, 564 (1931), the Mississippi Supreme Court said:

We invite the attention of the bar to the fact that we do not reverse criminal cases where there is a straight issue of fact, or a conflict in the facts; juries are impaneled for the very purpose of passing upon such questions of disputed fact, and we do not intend to invade the province and prerogative of the jury.

Accordingly, we find that the evidence in this case is sufficient to support the verdict of guilty and that Issues I and II are without merit.

THE JUDGMENT OF THE CIRCUIT COURT OF SIMPSON COUNTY OF CONVICTION OF THE TRANSFER OF COCAINE AND SENTENCE OF TEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WHICH SHALL RUN CONSECUTIVELY WITH THE TEN YEAR SENTENCE IMPOSED ON THE APPELLANT IN SIMPSON COUNTY CIRCUIT COURT CAUSE NO. 8887 IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.

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