

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-KA-00455 COA**

STANLEY PACE A/K/A STANLEY LEE PACE

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:	03/21/96
TRIAL JUDGE:	HON. ROBERT WALTER BAILEY
COURT FROM WHICH APPEALED:	CLARKE COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	DAVID A. STEPHENSON
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: JOLENE M. LOWRY
DISTRICT ATTORNEY:	BILBO MITCHELL
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	DELIVERY OF COCAINE: SENTENCED TO SERVE 12 YRS IN THE CUSTODY OF THE MDOC, PAY \$1000.00 FINE & COSTS OF \$237.50 & \$100.00 CRIME LAB FEE & \$30.00 RESTITUTION TO WAYNE CLARKE, JASPER DRUG FORCE
DISPOSITION:	AFFIRMED - 12/16/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	2/4/98

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

PER CURIAM:

Stanley Lee Pace was convicted sale of cocaine and was sentenced to serve a term of twelve years in the custody of the Mississippi Department of Corrections and ordered to pay a fine, costs, and restitution. He appeals challenging the sufficiency and the weight of the evidence for the drug conviction. He argues that the trial court abused its discretion in denying his motion for judgment

notwithstanding the verdict or alternatively, for a new trial.

On March 3, 1994, an undercover law enforcement agent with the Mississippi Bureau of Narcotics, Leon Williams, made a controlled buy of cocaine from the defendant, Stanley Lee Pace. Williams was asked to participate in this on-going undercover operation by Agent C. J. Cranford. Williams was given \$50 to make the purchase, and was fitted with a body transmitter so all activities and conversations could be recorded. He and a confidential informant went to some apartments where an individual directed them to an apartment to buy marijuana. Williams purchased some marijuana and was leaving when Pace approached him and asked if he wanted some cocaine. Pace then sold Williams some cocaine for \$30.

Williams later identified Pace's driver license photo, and testified that Pace was the man who had sold him the cocaine. Pace was subsequently arrested and convicted of the sale of cocaine. He was sentenced to twelve years in the custody of the Mississippi Department of Corrections and ordered to pay a fine, costs, and restitution.

Pace's issue challenges the sufficiency and weight of the evidence. We first examine the issue of sufficiency of the evidence. 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: Pace's motion for judgment notwithstanding the verdict. Williams testified that it was Pace who sold him the cocaine. Williams wore a body transmitter which recorded his communications with Pace. This tape was played for the jury. Williams was in arms' length of Pace for approximately twenty seconds and in his presence for about two minutes. Additionally, Grady Downey, a forensic scientist with the Mississippi Crime Lab, testified that the evidence submitted to the lab was cocaine. This credible evidence must be accepted as true, and is viewed in a light most favorable to the State. The evidence being sufficient, the trial court did not err in overruling Pace's motion for judgment notwithstanding the verdict.

Additionally, Pace claims that the verdict was against the overwhelming weight of the evidence. Our standard of review is dictated by *McClain*:

[T]he challenge to the weight of the evidence via motion for a new trial implicates the trial

court's sound discretion. . . 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.

. . . .

The jury is charged with the responsibility of weighing and considering the conflicting evidence and credibility of the witnesses and determining whose testimony should be believed.

McClain v. State, 625 So. 2d at 780. As stated above, there was direct testimony from Williams that Pace was the man who sold him the cocaine. Additionally, there was a tape of the conversation that occurred between Williams and Pace. Williams testified that he was 100% sure that Pace sold him the cocaine. The jury was provided ample testimony, and it was the province of the jury to weigh the credibility of the witnesses. Finding that the lower court did not abuse its discretion in overruling the motions requested by the defense, we affirm the decision of the lower court.

THE JUDGMENT OF THE CLARKE COUNTY CIRCUIT COURT OF CONVICTION OF THE SALE OF COCAINE AND SENTENCE OF TWELVE YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, FINE OF \$1000 AND RESTITUTION OF \$30 IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO CLARKE COUNTY.

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