

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-KA-00700 COA**

**MICHAEL SHOTWELL A/K/A MICHAEL
ANTHONY SHOTWELL**

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:	07/16/93
TRIAL JUDGE:	HON. JOHN M. MONTGOMERY
COURT FROM WHICH APPEALED:	CLAY COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	RICHARD BURDINE
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: SCOTT STUART
DISTRICT ATTORNEY:	PATRICIA SPROAT
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	CONVICTED OF POSSESSION OF COCAINE WITH INTENT TO DISTRIBUTE; SENTENCED TO 60 YEARS IN MDOC WITHOUT PAROLE
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:

Michael Shotwell was convicted of possession of cocaine with intent to distribute. The trial court found Shotwell to be a habitual offender per Miss. Code Ann § 99-19-81 (Rev. 1994) and also subject to having his sentence enhanced per Miss. Code Ann. § 41-29-147 (Rev. 1993). As such,

Shotwell was sentenced to a term of sixty years to be served in the custody of the Mississippi Department of Corrections. On appeal, Shotwell challenges both the sufficiency and the weight of the evidence. Finding no error, we affirm.

FACTS

On August 16, 1992, while on patrol, Police Officers Bobby Lane and George Swain observed Michael Shotwell's failure to stop at a stop sign. The officers testified that they followed Shotwell who speeded up immediately after going through the stop sign. The officers stated that they caught up with Shotwell and turned on their blue lights. The officers indicated that just prior to Shotwell's pulling over they saw him throw something out of the car window. The testimony indicated that Officer Swain retrieved the objects which later tested positive for crack cocaine. Meanwhile, Officer Lane approached Shotwell's car with the intention of making an arrest and that Shotwell attempted to pull away but Lane was able to subdue him.

The record indicates that Shotwell was not present for the completion of the trial as he left the courtroom during a recess and failed to return. The trial continued without him, and he was subsequently found guilty.

ANALYSIS

I. WHETHER THE TRIAL COURT ERRED IN DENYING SHOTWELL'S MOTIONS FOR A DIRECTED VERDICT AND A NEW TRIAL.

Motions for directed verdict and JNOV challenge the legal sufficiency of the evidence. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993). The credible evidence consistent with the verdict must be accepted as true, and the prosecution must be given the benefit of all favorable inferences that may be reasonably drawn from the evidence. *Id.* Review of the trial court's overruling of the motion for new trial challenges the weight of the evidence and implicates the trial court's sound discretion. *Id.* at 781. "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." *Id.*

In the present case, Officers Swain and Lane testified to seeing Shotwell throw something from his car just prior to stopping. Officer Swain testified that he retrieved the objects which appeared to be two plastic bags containing cocaine. Evidence was presented by the Mississippi Crime Lab that the substance recovered by Officer Swain was in fact crack cocaine. The State also presented the testimony of Sergeant Charles Johnson who indicated that he was called in by Swain and Lane to help process the case. Johnson testified that he read Shotwell his rights and explained to him that he did not have to say anything. Johnson stated that Shotwell indicated that he understood his rights and proceeded to answer Johnson's questions. Johnson testified that Shotwell admitted to throwing the cocaine from the car and that Shotwell also indicated that the cocaine was valued at approximately \$700 and that he intended to sell the cocaine.

Having reviewed the record, we find that the evidence was sufficient to support a verdict of guilty and that the verdict was not against the overwhelming weight of the evidence. We therefore find Shotwell's arguments to be without merit and affirm the decision of the circuit court.

THE JUDGMENT OF THE CIRCUIT COURT OF CLAY COUNTY OF CONVICTION OF POSSESSION OF COCAINE WITH INTENT TO DISTRIBUTE AND ENHANCED SENTENCE AS A HABITUAL OFFENDER TO SERVE A TERM OF SIXTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO CLAY COUNTY.

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