IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JIMI LEVAR WATTS — APPELLANT

VS. — NO. 2006-KA-2102-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

BY: W. GLENN WATTS
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [redacted]

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680

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BRIEF FOR THE APPELLEE

PROCEDURAL HISTORY:

On October 16-18, 2006, Jimi Lavar Watts, "Watts" was tried for possession of cocaine before a George County Circuit Court jury, the Honorable Robert Krebs presiding. R. 1. Watts was found guilty and given a twenty five year sentence in the custody of the Mississippi Department of Corrections. C.P. 73-74. Watts filed notice of appeal to the Mississippi Supreme Court. C. P 112..

ISSUES ON APPEAL

I.

DID THE TRIAL COURT ERR IN DENYING A PEREMPTORY INSTRUCTION?

II.

WAS WATTS DENIED HIS RIGHT TO CROSS EXAMINE HEARSAY FROM AN INFORMANT?

STATEMENT OF THE FACTS

On December 14, 2005, Watts was indicted for possession of at least 2 grams but less than 10 grams of cocaine, a schedule II controlled substance, on or about May 18, 2005. C.P. 3.

On October 16-18, 2006, Watts was tried for possession of cocaine before a George County Circuit Court jury, the Honorable Robert Krebs presiding. R. 1. Watts was represented by Mr. R. Keith Miller. R. 1.

Prior to trial, the trial court denied a motion to have the identity of an informant revealed to the defense. R. 12. The prosecution was not going to call the informant as a witness. The informant had not been a witness to any of the facts involved in the possession of cocaine charge.

Mr. Stacy Eubanks, an agent with the Mississippi Bureau of Narcotics, testified that he was part of a team investigating alleged illegal drug activities in Lucedale, Mississippi. The Grove area of Lucedale was known to be a section where drug activity had been occurring. R. 93.

On May 18, 2005, Eubanks received information about illegal narcotics activity by Watts occurring on Pine Street which was near The Grove. R. 97.

Mr. Eubanks had seen Watts driving an SUV with the Nascar plates many times. He had seen him driving that particular vehicle 10 to 15 times. He had never seen anyone else driving the vehicle. R. 105. When Eubanks and others drove down Pine Street, they found Watts sitting on a tire near the recognizable SUV. R. 101. He was "about 10 feet" from the vehicle. R. 108. There was no one else present. R. 104.

When asked if the car could be searched, Watts said yes. However, when Eubanks was going to inspect the car, Watts stated "well, hold on. I just got it out of the mechanic's shop. I really don't know what's in there." R. 101.

Mr. Eubanks walked up to the driver's side window. The window was rolled down. He

could see what appeared to be crack cocaine inside on the driver's side seat. It was in "plain view." R. 101. It was in a plastic bag inside a rolled down paper bag, leaning toward the open window. It was "in the middle" of the driver's seat. R. 103. The paper bag was rolled down; it was not "squished all the way down" as if someone had sat on it. R. 102.

It was stipulated that the cocaine in the bag was "6.59 grams of crack cocaine." R. 92. The street value of the cocaine was between "$600 and $1,000." R. 97. When questioned on cross examination about whether Watts had the keys to the car in his possession, Eubanks testified that he did not remember whether he did or did not have them. R. 115.

Mr. Keith Churchwell with the Lucedale Police Department testified that he saw Watts driving the SUV on May 18, 2005. R. 119-120. This was within 15 minutes of receiving information about alleged drug activity in an area near The Grove. R. 122. Churchwell corroborated Officer Eubanks in testifying to hearing Watts say he had gotten the car out of the mechanic's shop. R. 120. Chuchwell also testified that he had seen Watts drive the vehicle in question many times in and around Lucedale. He had never seen anyone else drive the vehicle. R. 132.

At the conclusion of the prosecution's case in chief, the trial court denied a motion for directed verdict. R. 134-146.

After being advised of his right to independently decide if he wished to testify, Watts chose not to testify in his own behalf. R. 146.

Watts was given his requested limiting instruction concerning testimony about the informant's information provided to the officers in the instant cause. There was no objection from the prosecution. R. 150;157. The instruction informed the jury that this information could not be used as proof of guilt in the instant cause. C.P. 52. It could only be used to show why the officers

were at the scene of the alleged "constructive possession" of cocaine crime. R. 157.

Watts was found guilty of possession of cocaine and given a twenty five year sentence in the custody of the Mississippi Department of Corrections. C.P. 73-74.

Watts through counsel filed a motion for a J. N. O. V. or a New Trial. A hearing was held on that motion. R. 195-225. After hearing from counsel, the trial court denied relief.

Watts filed notice of appeal to the Mississippi Supreme Court. C.P. 112.

SUMMARY OF THE ARGUMENT

1. The trial court did not err in denying a directed verdict. R. 134. The record reflects an "admission against interest" in the form of a "false exculpatory statement" along with "strong circumstantial evidence" for establishing that Watts had "dominion and control" of the "6.59 grams" of cocaine in the car near him. **McClain v. State**, 625 So. 2d 774, 778 (Miss. 1993).

In addition to "proximity" to the cocaine "in plain view" was circumstantial evidence for inferring that Watts had stationed himself so as to have control over the cocaine in his car. He could see for protective purposes who was approaching the cocaine from more than one direction. Watts' statement, "well, hold on. I just got it out of the mechanic's shop. I really don't know what's in there" in the context of the beginning of a successful search for drugs indicated knowledge that what was in his car was against his penal interest. R. 101. **Stewart v. State** 921 So. 2d 1287, *1290 (¶ 11-¶ 13) (Miss. App. 2006), **Tran v. State** 2006 WL 1320254, *8 (Miss. App. 2006).

2. Testimony about why the officers went to a area known for drug activity was admissible in evidence. **Jackson v. State** 935 So.2d 1108, *1114 (Miss. App. 2006). It was not harmful to Watts since he cross examined witnesses about this information from an informant. R. 106-116. Watts was also granted his requested limiting instruction without objection from the prosecution. R. 150; C.P. 52. It clearly informed the jury that this information could not be considered as evidence in support of his conviction for constructive possession. R. 157. He has not overcome the presumption that the jurors followed that instruction. **King v. State** 857 So. 2d 702, *729 (Miss. 2003). Comments about the informants statement which were not objected to during closing argument were waived. **Otis v. State** 853 So. 2d 856, *864 (Miss. App. 2003)

ARGUMENT

PROPOSITION I

WATTS WAS NOT ENTITLED TO A PEREMPTORY INSTRUCTION.

Watts' counsel believes that the trial court erred in denying him a directed verdict or a peremptory instruction. He believes that the record of this cause did not contain sufficient credible evidence for supporting a conviction for "constructive possession" of cocaine. There was only evidence of "proximity" to the cocaine found inside a bag in the automobile that Watts did not own. He believes that without additional incriminating evidence connecting Watts to the cocaine there was insufficient evidence for allowing the jury to even consider the evidence against him. Appellant's brief page 6-9.

To the contrary, the record reflects that there was not only proximity to "6.59 grams of cocaine" worth some "$600.00 to $1,000.00," there was also "an admission" by Watts which indicated his knowledge of what was going to be found in the car he was recently seen driving. R. 101. See M. Rule Evidence 801(d)(2) Admission by a party opponent.

This plus circumstantial evidence about the location of Watts in relation to the crack cocaine "in plain view " and "in the middle" of the seat of the car he was driving was sufficient for denying peremptory motions, and allowing the jury to resolve any conflicts in the facts as to whether Watts had "dominion and control" of the cocaine in the car.

Mr. Stacy Eubanks, an agent with the Mississippi Bureau of Narcotics, testified that on May 18, 2005 he was working in the Lucedale area. They received information that alleged illegal drug activity was occurring on South Pine Street near The Grove.

He along with Officer Keith Churchwell and others went to Pine Street to investigate. When

they arrived, they found Watts sitting on a tire near the parked SUV. He was some 10 feet from the vehicle. This was the same SUV he had been seen driving. R. 131. There was no one else present at the scene. R. 103-104. Watts had been seen driving the car many times. He was always the driver, and there was no passenger. R. 105.

When Watts was asked about whether the car could be searched, he replied yes. However, when Eubanks was moving toward the car, Watts said "No, hold on. I just got it out of the mechanic's shop. I really don't know what's in there." R. 101.

What appeared to be crack cocaine could be seen "in open view." It was seen inside the car on the driver's side seat. It was inside a rolled down paper bag. It was sitting "in the middle" of the driver's side seat. R. 101. The paper bag was leaning toward the rolled down driver's side window. The drugs in the car were accessible from the car's open window. R. 114.

> Q. Do you have any personal experience with, in this case, the amount of drugs, about how much it would cost on the street?
>
> A. Right. Drugs weighing this much probably would cost anywhere from $600 to $1,000, according to how small it was cut up to be sold. R. 97.
>
> ...
>
> Q. Agent Eubanks, when you arrived at the scene, what did you see?
>
> A. Basically we arrived at the scene. The Ford Expedition with the Nascar tag was parked there. **Mr. Watts was sitting on a tire in front of the vehicle about 10 feet in front of the vehicle. ..I said, Jimi, do you have anything in the vehicle. He said no. I said, well, do you mind if we take a quick look and search. He said no, I don't. So as I was walking from him to the driver's side of the vehicle, he said, well, hold on. He said, I just got it out of the mechanic's shop. I really don't know what's in there. So I walked over to the driver's side window, looked in and the window was opened and rolled down. And I could look down, and on the driver's side seat in the middle of the seat, was a brown paper bag, and it was rolled down. You could see in it, and inside of it was another plastic bag containing the crack cocaine that you could literally see in plain view.** R. 101. (Emphasis by Appellee).
>
> ...

Q. Anything else? You said he was sitting on a tire?

A. He was sitting on an old tire. It didn't have a rim on it. It was just a tire. **He was the only person there.**

Q. That's what I was going to ask you next. **Was there anyone else around?**

A. **No, there was no one else there.** Now, three or four or five minutes later, several other people showed up there in the area, but he was the only person there when we rolled up. R. 103-104. (Emphasis by Appellee).

...

Q. Mr. Eubanks, have you ever seen the defendant in the car that you saw at the scene that day?

A. **Yes. I've seen Mr. Watts driving that vehicle probably 10 to 15 times prior to this particular occasion, and every time he was driving the vehicle. I never saw anybody else driving the car except him.** R. 105. (Emphasis by Appellee).

...

Q. **And this is a high drug area?**

A. **Yes, sir.**

Q. Where you guys have made a lot of arrests and probably a lot of convictions on guys with dope?

A. That's correct. (Emphasis by Appellee).R. 113.

Mr. Keith Churchwell, an eight year veteran with the Lucedale Police Department, testified that he received information about alleged illegal drug activity at The Grove. This was on May 18, 2005. Mr. Churchwell knew Watts from previous contact with him. He had seen him driving the same car on numerous occasion in Lucedale in the past. He had never seen Watts in the car as a passenger. R. 132.

Churchwell corroborated Eubanks in hearing Watts mention that his car was just out of the shop. R. 120. Churchwell testified that it was only some "twenty minutes" between the time they received information about alleged activity at The Grove and the time they spotted Watts sitting near

the parked SUV. R. 125. Churchwell also testified that he had seen Watts driving the SUV on a daily basis. There was never a passenger in the car. R. 132. Churchwell testified that from where Watts was sitting on the tire near his car, he could see who was coming in the direction of his car from more than one direction. R. 128-129.

> Q. Did you have an occasion on May 18th, 2005 to come in contact with the defendant?
>
> A. Yes, ma'am, I did. On May the 18th, it was around 2, I guess it was, something like that, we received some information of illegal narcotics activity in the Grove area concerning Jimi Watts. ..We turned off from Winter Street to South Pine Street. We approached The Grove area and observed a black SUV–I think it was brown on the bottom. It was a Ford Expedition driven by Jimi Watts. As we approached the vehicle, we got out and approached Mr Jimi Watts who was sitting on a tire in front of the SUV, I don't know, probably about 10 or 12 feet in front of the SUV. R. 119.
>
> ...
>
> He was saying something about a vehicle in the shop or something like that. I don't know what all was said. So we started–I started helping them search the vehicle. And apparently Stacy observed a brown paper bag in the diver's seat of the SUV in plain view, dope–crack cocaine. R. 120.
>
> ...
>
> Q. It didn't appear to you to be important that if the vehicle had been in the shop and somebody else had been driving the vehicle, that maybe that would be the person that had possession of the cocaine that was found in the vehicle?
>
> A. **I'd just seen him 20 minutes before the situation.** R. 125.
>
> ...
>
> Q. So we're talking about 45 minutes or so from the time you saw him driving the vehicle until the time you guys get to the Grove where the vehicle sits with nobody in it right?
>
> A. Yes. R. 125.
>
> ...
>
> Q. But again, between the time you saw him, and the time you arrived, you don't know who else was driving the vehicle?
>
> A. No, sir. **All I know is when we drove up there, he was sitting in front of his vehicle that I've seen him drive numerous times. He was sitting on a tire, where**

he could look both ways down the road. He could look up the road and down the road. I don't know. I mean, I don't know what else to say. He was sitting in front of his vehicle. R. 128-129. (Emphasis by Appellee).

On redirect, Churchwell testified that Watts was found within 200 yards of The Grove, which was known to be a place where drugs were being transferred and sold in the past.

Q. Is that close to The Grove, would you say?

A. 300 yards, 200 yards.

Q. Is that where you saw the defendant? You said it was on Winter Street?

A. Church Street and Winter Street; yes, ma'am. Church Street is a block and Winter Street is a block. Pretty much three corners--well, two corners to The Grove.

Q. **And how much time was that before you received information that he was involved in some illegal narcotics activity, from the time you saw him?**

A. **Shortly. Shortly. I mean, shortly. Minutes.**

Q. 10 minutes? 30 minutes? An hour? 2 hours?

A. From the time I seen him? Q. Uh-huh.

A. **I went to the Sheriff's department. I want to say no more than 10 minutes.** R. 130-131.

...

Q. **You've never seen him as a passenger?**

A. **No. And that's my job is to patrol the city of Lucedale. That's my assigned city. I work it every day. See him every day.** R. 132. (Emphasis by Appellee).

The trial court denied a motion for a directed verdict, finding that there was sufficient circumstantial evidence along with Watts' statement for inferring he was aware of the cocaine and that it was under his "dominion and control."

Court: In this case, the officers went to a place, as surely elicited by the defense, referred to as the Grove, which is a known drug have for apparently sales, possession, et cetera, in Lucedale, Mississippi. They arrived to find the defendant 10 feet in front of a vehicle that he had been seen riding in some 30 minutes beforehand. Officer

> Churchwell testified that he had been seen riding in some 30 minutes beforehand. Officer Churchwell testified that he saw him riding in it 15 or 20 minutes. They went and received certain information went to the site, and there was the same vehicle. That the defendant has been in not only on May the 18th, 2005, but numerous times. The title in and of itself makes no difference. In fact, the court finds that with the frequency of the use of that vehicle, that the defendant had use and possession and control over the vehicle. That he was sitting some 10 feet from it on a tire; that he had–was in the middle of a field, that gave him unparalleled sight of the comings and goings of anyone coming up that road. In addition, the bag that's been marked as State's 3-ID, Mr. Eubanks, when presenting it, had it in the driver's seat with part of it tilted down towards the driver. It boggles the mind to think that anyone who lives in the area, who knows the reputation of The Grove, would pick up a car from any place having it worked on, drive it to The Grove with a bag in his plain view as the driver, and not be concerned about what's in it. There's no testimony in front of me that shows that the defendant is entitled to a directed verdict, and therefore it's overruled. R. 145-146.

In **McClain v. State**, 625 So. 2d 774, 778 (Miss. 1993), the Court stated that when the sufficiency of the evidence is challenged, the prosecution was entitled to have the evidence in support of its case taken as true together with all reasonable inferences. Any issue related to credibility or the weight of the evidence was for the jury to decide, not this court.

> 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. **Wetz v. State**, 503 So. 2d 803, 807-08 (Miss. 1987). 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. **Esparaza v. State**, 595 So. 2d 418, 426 (Miss. 1992); *Wetz* at 808; **Harveston v. State**, 493 So. 2d 365, 370 (Miss. 1986);...The credible evidence consistent with McClain's guilt must be accepted as true. **Spikes v. State**, 302 So. 2d 250, 251 (Miss. 1974). The prosecution must be given the benefit of all favorable inferences that may be reasonably drawn from the evidence. *Wetz*, at 808 , **Hammond v. State**, 465 So. 2d 1031, 1035 (Miss. 1985); *May* at 781. Matters regarding the weight and credibility of the evidence are to be resolved by the jury. **Neal v. State**, 451 So. 2d 743, 758 (Miss. 1984);..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. *Wetz* at 808; *Harveston* at 370; **Fisher v. State**, 481 So. 2d 203, 212 (Miss. 1985).

When the evidence cited above was taken as true together with reasonable inferences there was sufficient, credible evidence in support of the trial court's denial of all peremptory instructions. While Watts was not sitting in the car, and did not own the car, he was seen driving it alone numerous times the day of the incident as well as in the past. Neither Officer Eubanks or Churchwell had ever seen a passenger in the car. R.105; 132. While he was not in the car, he was sitting on a tire near the car. From this vantage point, he could see anyone coming or going down the road toward his car. R. 113; 128. His car was parked near an area known for drug activity. R. 113.

The cocaine found inside the car was "in open view." R. 101. It could be seen inside a "rolled down paper bag" from the outside of the car. It was sitting "in the middle" of the driver's side seat. The car's driver's side window was rolled down for easy access to the drugs. The car was not cluttered with any other bags or objects near the cocaine or any where else. R. 132. The bag was not "squished all the way down" as if it had been sat on. It appeared to have been sat up in that position for a purpose. From the position where Watts was sitting, he had easy access to the drugs as well as surveillance to prevent detection from anyone approaching his car and the cocaine. R. 120-121; 128.

While Watts initially gave consent to have the car searched, he quickly attempted to qualify that consent by saying ,"well, hold on. I just got it out of the mechanic's shop. I really don't know what's in there." R.101 . This admission was contradicted by testimony about Watts being seen driving the car within twenty minutes of finding him beside the car on an access road to a active drug transaction area. R. 125; 130-131. The record did not reflect that Watts did not have the keys to the car. R. 115.

In **Stewart v. State** 921 So. 2d 1287, *1290 (¶ 11-¶ 13) (Miss. App. 2006), the Court found

that proximity plus "an admission" by Stewart was sufficient for establishing "constructive possession."

> ¶ 11. Second, as previously stated, actual physical possession need not be established by the State. It is sufficient that the substance is within the defendant's dominion or control. **Curry**, 249 So.2d at 416. Testimony was presented at trial which established more than mere proximity to the cocaine. Officer Thompson testified that Stewart admitted to him that he was the owner of the cocaine. Further, Officer Moak testified that Stewart claimed that the cocaine was owned by Cedric Watson, who, according to Stewart, was accusing Stewart of having stolen the cocaine. This admission would indicate that Stewart at least had knowledge of the presence of the cocaine. Lastly, Officer Moak testified that the cocaine was discovered in a plainly visible position in close proximity to Stewart, the sole occupant of the vehicle. While Stewart denied at trial that he had admitted anything to either officer, this is a question of fact to be determined by the jury.
>
> ¶ 12. Third, although Officer Thompson failed to include the oral admission of Stewart in his police report of the incident, Stewart has made no claim that the oral admission was introduced in violation of the Mississippi Rules of Evidence. We find that the credibility of Officer Thompson's testimony was properly presented to the jury for consideration. Stewart's argument that Officer Moak testified to a different admission than Officer Thompson is likewise a question of fact to be weighed by the jury. It is entirely possible that Stewart offered a different version of events to Officer Moak than he did to Officer Thompson, or that, as he claimed, he offered them no version of events at all. The task of determining the most credible of the conflicting factual accounts was properly left to the jury. We also note that Stewart testified that Officer Thompson had given him his card and had requested Stewart to contact him in regards to cooperating with Southwest Narcotics. The jury could find from this testimony corroboration of Officer Thompson's testimony that he had given Stewart his card because Stewart had admitted guilt and Thompson believed that Stewart was intending to cooperate with him.
>
> ¶ 13. Accordingly, we find that there was sufficient evidence to meet each element of constructive possession of cocaine, and that the verdict of the jury was not against the overwhelming weight of the evidence. We affirm.

In **Tran v. State** 2006 WL 1320254, *8 (Miss. App.) (Miss. App. 2006), the Court of Appeals relied upon **U. S. v. Gallo**, 927 Fed. 2d 815, 822 (5th Cir. 1991) in denying a motion for rehearing for Tran This was based in part upon "false exculpatory statements" along with the cumulative circumstances involved in that money laundering case. On August 16, 2007, the

Mississippi Supreme Court denied certiorari for **Tran.**

> The **Gallo** court held that, based on the concerted action among the defendants, the suspected narcotics trafficker, and the known drug dealer, combined with the defendant's false exculpatory statements, the jury could reasonably infer that the defendant knew he was transporting proceeds of unlawful activity. Id.

In **Tatum v. State** 955 So.2d 377, 380 -381 (¶10-12) (Miss. App. 2006), the Court found that the trial court did not err in denying Tatum's motion for a new trial. There was evidence indicating that cocaine was found in the patrol car near where Tatum had been sitting. There was no one else in the car, and there was no cocaine visible in the car prior to Tatum having been inside the car.

> ¶11. Although the facts in **Miller** (634 So. 2d 127 (Miss. 1994)) differ from those in the case at bar in that Officer Akins testified that he locked his patrol car when he took Miller into the station for booking, we nonetheless find that the State presented sufficient evidence linking Tatum to the cocaine. As in **Miller**, Officer Turner testified that he found no contraband in his patrol car when he performed a routine inspection before beginning his shift on the day Tatum was *381
> arrested. Officer Turner also testified that, because Tatum was handcuffed behind his back, Tatum had access to an area of his body that was not searched during the pat down, i.e., the small of his back. Moreover, the evidence clearly shows that Tatum was the only person to sit in the front passenger seat of Officer Turner's car. Furthermore, Officer Turner testified that he would have discovered the cocaine if it been in his patrol car prior to Tatum's arrest because he "had reached for his mike several times during that day so [he] couldn't help but notice [the] area" of his car where the cocaine was found.
>
> ¶ 12. Based on these additional incriminating factors, we cannot conclude that reasonable and fair-minded jurors could only find the accused not guilty; nor can we conclude that the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice. Consequently, we find that the trial court did not err in denying Tatum's motion for JNOV or, in the alternative, a new trial. This issue is without merit.

The Appellee would submit that we have cited sufficient, credible corroborated evidence in support of the trial court's denial of peremptory instructions. When the circumstantial evidence was taken in its "totality" along with Watts' admission, there was sufficient evidence for finding that all

the elements of "constructive possession" had been met. Officer Churchwell testified to seeing Watts driving the distinctive SUV within twenty minutes of hearing him say the SUV had been in the shop for repairs. R. 125.

This was sufficient for inferring that Watts had the cocaine in the car "under his domain and control." The case was properly submitted to the jury for their deliberations. The jury was responsible for resolving any conflicts in the facts. The Appellee would submit that this issue is lacking in merit.

PROPOSITION II

WATTS WAS NOT ENTITLED TO CROSS EXAMINE AN INFORMANT WHO DID NOT WITNESS THE CRIME FOR WHICH HE WAS CHARGED.

Watts' appeal counsel argues that he was prejudiced by the testimony about Watts' alleged involvement in other drug activities at The Grove in Lucedale. He believes that this testimony was prejudicial to Watts because he could not cross examine the informant about the circumstances involved in his gaining this alleged information of criminal activity. Appellant's brief page 9-12.

To the contrary, the record reflects that the trial court denied a motion to have the identity and alleged criminal history of the informant relied upon by the police officers because he was not going to be called as a witness. He or she was not a witness to the possession of cocaine charge for which Watts was being charged. R. 11-12.

In **Brent v. State** 929 So. 2d 952, *956 -957 (Miss. App. 2005), the Court of Appeals found that where an informant was not a witness to the crime charge his identity did not have to be revealed.

> ¶. In **Esparaza v. State**, the Mississippi Supreme Court held that the identity of a confidential informant need not be disclosed if the informant did not witness the crime or will not be called as a witness at trial. **Esparaza v. State**, 595 So.2d 418, 424 (Miss.1992). The court stated that merely providing information that established probable cause to support a search warrant was not enough to require the informant's disclosure, stating "that degree of connection with the crime *957 charged constitutes too tenuous a link to justify disclosing the informant." Id.
>
> ¶ 10. In the case sub judice, prior to Brent's arrest, the confidential informant accompanied an officer to a residence for the purchase of drugs from Brent. The purchase became the later grounds for the probable cause justifying the search warrant. We find that the facts of this case fit neatly into our **Esparaza** precedent, as the informant at issue merely provided reliable information of Brent's location and possession of cocaine. Therefore, this issue is without merit.

Additionally, while the information received by the informant was mentioned, there was no

specific information about anything that Watts did that related to the constructive possession charge in the instant cause. R. 97; 119. Rather it was general information in connection with the fact that illegal drug activity was thought to be occurring near The Grove, a geographical area in Lucedale. R. 7. The record reflects that Officer Eubanks was cross examined about what he heard from the informant as well as when in relation to Watts arrest for constructive possession. R. 106-116. And contrary to gratuitous assumptions in the appellant's brief, there is a lack of evidence for holding the informant in this case had a criminal history.

In **Jackson v. State** 935 So.2d 1108, *1114 (Miss. App. 2006), the court pointed out that information from an informant about why the police acted as they did and were at the scene of a crime was not inadmissible hearsay.

> ¶ 9. Hearsay is a statement, other than one made by the declarant while testifying at the trial, offered in evidence to prove the truth of the matter asserted. M.R.E. 801(c); **Clemons v. State**, 732 So.2d 883, 888(¶ 19) (Miss.1999). None of the statements that Jackson objected to were offered to prove the truth of the matter asserted, which was whether the stolen items were in Jackson's possession. Furthermore, hearsay is admissible to the extent required to show why an officer acted as he did and where he was at a particular place at a particular time. **Tate v. State**, 819 So. 2d 555, 558(¶ 14) (Miss. Ct. App.2002) (citation omitted). Officer Jerrell's testimony was not introduced for the purpose of proving the truth of the assertion but to show why he was at Jackson's residence. We recognize that an accused has the right to broad and extensive cross-examination of the witnesses against him. **Caston v. State**, 823 So.2d 473, 491(¶ 50) (Miss.2002) (citations omitted). However, when an officer's testimony about the substance of a conversation with an informant is offered to show the reason for the officers's presence at the scene of investigation, an informant's tip is admissible to show why an officer acted as he did and was present at the said scene. **Clemons**, 732 So.2d at 888(¶ 21). Accordingly, we find no merit to this issue.

In addition, the trial court granted Watts' requested jury instruction, D-13. It informed the jurors that any testimony from the informant about Watts' alleged drug activity could not be considered as evidence of guilt on the constructive possession charge. C.P. 52. There was no objection to the instruction from the prosecution. R. 150; 157.

The trial court's limiting instruction to the jury stated as follows:

> The Court instructs the jury that the testimony concerning information received by law enforcement as to drug activity involving Jimi Watts may not be considered by you as evidence of guilty in this case. The Court further instructs the jury that this information may be considered by you only as to the reason for the officers' presence near the defendant at the time of the arrest. C.P. 52; R. 157.

In **King v. State** 857 So. 2d 702, *729 (Miss. 2003), the Court found that King had not overcome the presumption that the jurors followed the instructions as given by the trial court.

> ¶96...The instruction tells the jury (1) that the only purpose of the testimony of H.G. and Stewart was to aid in determining the "truth and veracity" of Dooley's testimony; and (2) that the jury was prohibited from using the H.G. and Stewart testimony "in arriving at your decision as to whether or not David Earl King and Nathan Paul King are guilty" of the charged crimes.
>
> ¶ 97. Clearly, the instruction appropriately limited the jury's use of the testimony of H.G. and Stewart to its proper and only purpose. The jury is presumed to follow the instructions of the trial court, **Davis v. State**, 660 So.2d at 1253; **Walker v. State**, 671 So.2d 581, 618 (Miss.1995); **Collins v. State**, 594 So.2d 29, 35 (Miss.1992), and, King has failed to overcome the presumption.

The record reflects that there was no objection to the comment about the informant's information during closing argument. R. 163.

In **Otis v. State** 853 So. 2d 856, *864 (Miss. App. 2003), the Court pointed out the Supreme Court precedent for finding that failure to object to remarks in closing waives this issue on appeal.

> ¶ 23. 'It is the rule in this State that where an objection is sustained, and no request is made that the jury be told to disregard the objectionable matter, there is no error' **Minor v. State**, 831 So.2d 1116, 1123 (¶ 22) (Miss. 2002) (citing **Perry v. State**, 637 So.2d 871, 874 (Miss.1994)). 'Furthermore, '[f]or this Court to consider claims of alleged erroneous comments of the prosecuting attorney in closing arguments, a contemporaneous objection must have been made; otherwise, the point is deemed waived.' Id. at 1123 (¶ 22) (citing **Banks v. State**, 782 So.2d 1237, 1242 (Miss.2001)).

The Appellee would submit that the record reflects there was no prejudice from testimony received from an informant. This testimony explained why the officers acted as they did in going

to an area near The Grove. In addition, the jury were instructed that information about other alleged criminal activity could not be used against Watts in the instant cause. R. 157. There is a presumption that the jury followed the court's instruction. Issues related to statements in closing arguments made without a contemporaneous objection were waived.

The Appellee would submit that this issue is also lacking in merit.

CONCLUSION

Mr. Jimi Levar Watts' conviction should be affirmed for the reasons cited in this brief.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: W. Glenn Watts

W. GLENN WATTS
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [redacted]

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680

CERTIFICATE OF SERVICE

I, W. Glenn Watts, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Robert P. Krebs
Circuit Court Judge
Post Office Box 998
Pascagoula, MS 39568-1959

Honorable Anthony Lawrence, III
District Attorney
Post Office Box 1756
Pascagoula, MS 39568-1756

Ray T. Price, Esquire
Attorney At Law
Post Office Box 1546
Hattiesburg, MS 39403-1546

This the 22nd day of August, 2007.

W. Glenn Watts

W. GLENN WATTS
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MISSISSIPPI 39205-0220
TELEPHONE: (601) 359-3680