IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

LARRY M. MOORE — **APPELLANT**

VS. — **NO. 2006-KA-2159-COA**

STATE OF MISSISSIPPI — **APPELLEE**

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

This is another tale of a guy selling dope, *viz.*, crack cocaine, to a police informant for the purchase price of $40.00. (R. 70, 73)

Larry M. Moore has been convicted of the sale of .42 grams of crack cocaine to David Wiley in Winston County.

Moore's conviction for sale was based largely, but not entirely, upon the testimony of Wiley, a testifying informant and prior misdemeanant (R. 38, 45), who sold the cocaine to Moore during a daytime transaction which was audio and videotaped. The credibility of David Wiley, according to Moore, was impeached because he could not recall the defendant's name and he was paid $100 for each case that he made. (R. 45-46; Brief of the Appellant at 1, 7)

LARRY MOORE, a forty-five (45) year old African-American male (R. 63) and resident of Louisville (C.P. at 8) where he lived with his mother (R. 42), prosecutes a criminal appeal from his conviction of the sale of cocaine following trial by jury on November 8, 2006, in the Circuit Court

of Winston County, Clarence E. Morgan, III, presiding.

Moore was indicted on March 28, 2006, for the sale and transfer of cocaine on March 10, 2005, in violation of Miss.Code. Ann. §41-29-139. (C.P. at 3)

Following his trial by jury on November 8, 2006, Moore was convicted of the sale of cocaine. Moore was thereafter sentenced to serve twelve (12) years with the MDOC with four (4) years suspended and five (5) years of supervised probation. (C.P. at 27-28)

Moore, who assails the denial of jury instruction D-1 and the weight of the evidence used to convict him, seeks a reversal of his conviction and a remand for a new trial. (Brief of Appellant at 2, 8)

Two (2) individual issues are raised by Moore on appeal to this Court:

ISSUE I. The trial court erred in denying jury instruction D-1 which would have instructed the jury the indictment was not evidence of the defendant's guilt.

ISSUE II. The verdict of the jury was against the overwhelming weight of the evidence.

STATEMENT OF FACTS

On March 10, 2005, David Wiley, a paid and confidential informant, was searched, supplied with money, and wired for sound and video by members of the Mississippi Bureau of Narcotics. (R. 31-32, 39-40) Wiley then drove his truck, which was also searched, to a house on Winston Street in Louisville where he purchased crack cocaine from Larry Moore for $40.00. (R. 39-41)

A videotape of the transaction was played in full and narrated, at least in part, by Wiley for the benefit of the jury. (R. 43-44)

Four (4) witnesses testified for the State of Mississippi, during its case-in-chief, including David Wiley, the paid confidential informant who claimed he purchased cocaine from Larry Moore.

Wes Stapp, an agent with the Mississippi Bureau of Narcotics, testified he wired Wiley for

sound and video. (R. 32-33) Following the purchase of crack cocaine, Wiley surrendered the contraband to Stapp. (R. 33)

David Wiley, the State's confidential source, testified he purchased $40 worth of cocaine from Larry Moore at the time and place testified about. (R. 39-40)

Gerald Hayes, an investigator with the Louisville Police Department, testified he had known the defendant personally for ten (10) years and identified Moore as the seller depicted in the video. (R. 51)

Brandi Goodman, a forensic scientist specializing in the field of drug identification, testified she tested the exhibit in question and identified it as containing "cocaine base with a total weight of 0.42 gram[s]." (R. 56)

At the close of the State's case-in-chief, the defendant moved for a directed verdict on the ground the State has " . . . failed to make a *prima facie* case." (R. 58)

This motion was overruled. (R. 58)

After being advised of his right to testify or not to testify, **Larry Moore,** the defendant, elected to testify in his behalf. (R. 63-64) Moore testified he did not own a "doo" rag or jewelry and that he was not the man in the video. (R. 64) Moore denied he sold cocaine to Wiley or to anyone else. (R. 63-64)

During cross-examination, Moore denied having a twin brother. (R. 65)

After watching the video, **Inell Moore,** the defendant's mother, testified the seller depicted therein was not her son, Larry, because Larry " . . . don't wear do rags." (R. 61) Moreover, " . . . [t]hat don't look like it's in front of my house." (R. 62)

Following closing arguments, the jury retired to deliberate at 1:30 p.m. (R. 80) Forty-seven (47)minutes later, at 2:17 p.m., it returned a verdict of "We, the jury, find the defendant, Larry

Moore, guilty of sale, transfer, delivery or distribution of cocaine, a Schedule II controlled substance." (C.P. at 26; R. 81)

A poll of the jurors, individually, reflected the verdict returned was unanimous. (R. 81)

Judge Morgan thereafter sentenced Moore to serve twelve (12) years in the custody of the MDOC with four (4) years suspended. (R. 83)

On November 17, 2006, Moore, filed his motion for judgment notwithstanding the verdict or, in the alternative, for a new trial. (C.P. at 31-32) The motion was overruled on November 27, 2006. (C.P. at 33)

Kenneth Bridges, a practicing attorney in Louisville, did a commendable job of representing Moore during the trial of this cause.

On January 8, 2007, an order was entered substituting Leslie S. Lee, an attorney with the Mississippi Office of Indigent Appeals, for the purpose of this direct appeal. (C.P. at 45)

Glenn Swartzfager, Mississippi Office of Indigent Appeals, has filed an excellent brief on behalf of Moore who, in our opinion, was hopelessly guilty.

SUMMARY OF THE ARGUMENT

I. Jury Instruction D-1. The trial judge did not err in denying jury instruction D-1 because the gist of that instruction was covered by instruction C-1 as well as the trial court's voir dire of the prospective veniremen, all of whom assured the court, under the trustworthiness of the official oath, they would *not* consider the indictment as evidence of Moore's guilt.

II. Weight/Sufficiency of the Evidence.

Although the target of Moore's complaint is the "weight" of the evidence as opposed to it legal "sufficiency," our response will encompass scrutiny of both prongs.

The verdict of the jury was supported by sufficient credible testimony and evidence and was

not against the overwhelming weight of the evidence. **Jones v. State,** No. 2005-KA-02135-COA decided February 20, 2007 [Not Yet Reported].

Accepting as true the testimony and evidence in favor of the State, including the identification testimony of David Wiley, it is clear the evidence was sufficient for a reasonable, fairminded, hypothetical juror to find beyond a reasonable doubt that Larry Moore, was guilty of selling cocaine at the time and place testified about.

The evidence in this case fails to preponderate heavily against the verdict, and allowing it to stand would not sanction an unconscionable injustice. **Withers v. State,** 907 So.2d 342 (Miss. 2005).

Conflicts in the testimony were created by the claims of both Moore and his mother that the person in the videotape was not Moore. This created a jury issue on the question of the seller's identity.

Wiley's testimony identifying Moore as the purveyor of coke was corroborated by the testimony of Officer Hayes and by the videotape itself which was quite incriminating. (R. 43) But even if not, the uncorroborated testimony of a confidential informant, whether saint or sinner, is entirely sufficient to support a conviction. **Bridges v. State,** 716 So.2d 614 (Miss. 1998).

The fact Wiley may have been impeached with evidence of his status as a paid informant (R. 45, 49) and Wiley's initial failure to recognize he had gone to school with the defendant (R. 46) went to the weight for the jury to give his testimony and not to its admissibility. All of this was covered at some length during Moore's cross-examination of David Wiley. (R. 45-49) The credibility of Wiley, of course, was a matter for the jury and not for the reviewing Court. *See* jury instruction C-1 at C.P. 13-16.

"The jury is the *sole* judge of the weight and credibility of the evidence." **Byrd v. State,** 522

So.2d 756, 760 (Miss. 1988) [emphasis supplied].

ARGUMENT

ISSUE I.

THE TRIAL JUDGE DID NOT COMMIT REVERSIBLE ERROR, IF ERROR AT ALL, IN DENYING JURY INSTRUCTION D-1.

Moore claims the trial judge erred in denying jury instruction D-1 which reads, in its entirety, as follows:

> The Court instructs the Jury that the fact that the Defendant was indicted is not evidence in this case, and the indictment itself is not evidence of Defendant's guilt or innocence. (C.P. at 18)

Judge Morgan denied this instruction for the reason that "D-1 is covered by C-1 or by instruction number one." (R. 69)

We agree.

Under the facts and circumstances found in this case, no reasonable and fairminded juror would have considered the indictment as evidence of guilt where, as here, the jury was instructed in C-1 that

> * * * * * *
>
> It is your duty to determine the facts and *to determine them from the evidence produced in open court.* You are to apply the law to the facts and in this way decide the case. You should not be influenced by bias, sympathy or prejudice. *Your verdict should be based on the evidence* and not upon speculation, guesswork or conjecture.
>
> * * * * * *
>
> *The evidence which you are to consider consists of the testimony and statements of the witnesses and exhibits offered and received.* You are also permitted to draw such reasonable inferences from the evidence as seem justified in light of your own experience.
>
> * * * * * *

> *The law presumes every person charged with the commission of a crime to be innocent.* This presumption places upon the State the burden of proving the defendant guilty of every material element of the crime with which the defendant is charged. Before you can return a verdict of guilty, the State must prove to your satisfaction beyond a reasonable doubt that the defendant is guilty. The presumption of innocence attends the defendant throughout the trial and prevails at its close unless overcome by evidence which satisfies the jury of the defendant's guilt beyond a reasonable doubt. The defendant is not required to prove his or her innocence. (C.P. at 14-15) [emphasis ours]

Viewing the admonition and advice found in C-1 together with comments made to the veniremen during the trial judge's voir dire, there is no way under the sun a petit juror finally selected to try this case would have considered the charge in the indictment as evidence of guilt against the defendant.

During the court's voir dire of the veniremen present, Judge Morgan stated, *inter alia,* the following:

> Okay. *As we talked about, again, yesterday,* the way this case gets here is it comes through the grand jury. At the grand jury, which consists of 20 people, the State presents its side of the case. After it has done that, the grand jury will take a vote.
>
> * * * * * *
>
> Okay. The grand jury determines whether they think a crime has been committed and if so, is there enough evidence for there to be a trial against some individual. *But the indictment is absolutely no evidence of guilt whatsoever. You must not consider it as evidence of guilt. Everybody understand that?*
>
> *Okay. Is there anybody here that feels just because Mr. Moore has been indicted that he must be guilty of something? Will you all tell me then that you will presume that he is innocent until such time as the State proves his guilt beyond a reasonable doubt?* (R. 10-11) [emphasis supplied]

All of the above was either voiced or written in plain and ordinary English. It is implicit in the court's voir dire that each of the veniremen from which the petit jurors were selected indicated, under the trustworthiness of their official oaths (R. 4), that none - no, not one - of them felt that simply because Moore was indicted, he must be guilty of something.

It is implicit, if not explicit, from this record that each of the veniremen present indicated to Judge Morgan that he or she understood the indictment was not evidence of Moore's guilt and that they would presume the defendant innocent of the crime charged until such time as the State proved his guilt beyond a reasonable doubt.

Indeed, there can be no question about it.

Moore's reliance upon **Rainer v. State,** 438 So.2d 290, 293 (Miss. 1983), and **Williams v. State,** 761 So.2d 149, 152 (Miss. 2000), while commendable, is unavailing because the scenarios in those two cases were simply different from the one found here.

First, there is no mention in either **Rainer** or **Williams** to the content of the trial judge's voir dire which in Moore's trial scenario prevented any error.

Second, Rainer was reversed based upon a *combination* of the granting of the State's substantive charge (S-2), which assumed as true material facts, and the denial of a defense instruction (D-2) which would have instructed the jury it should not consider the indictment as evidence of guilt.

The court reaffirmed its rule that when the jury is permitted to take the indictment to the jury room, it should be instructed the indictment is not evidence of the facts charged. According to the **Rainer** Court, the first sentence of S-2, which assumed as true material facts, was the equivalent of taking the indictment to the jury room.

Moore seeks to show the similarity between the first sentence of the S-2 instruction

in **Rainer** and the S-1 instruction in the case at bar.

There is no similarity.

The first sentence of the **Rainer** S-2 instruction contained a fatal flaw. It assumed " . . . as true the fact that the antifreeze was stolen, a material fact for the determination of the jury . . . " 438 So.2d at 293.

The first sentence of the S-1 instruction given in the case *sub judice* stops short of assuming anything. It contains no flaws, fatal or otherwise.

In **Rainer** the Court summed up the entire matter as follows:

> * * * While the record does not reveal whether the jury was given a copy of the indictment, they were certainly reminded of it through Instruction S-2. Recalling that Instruction S-2 referred to the indictment in a manner which assumed as true material facts which were within the province of the jury to decide, that instruction was equivalent to handing the jury a copy of the indictment. The granting of Instruction S-2 *coupled with the denial of Instruction D-2 require that we reverse.*

In the case at bar, there is no "coupling" requiring reversal. Nothing in the S-1 instruction, which was not objected to by Moore (R. 69), assumes as true material facts. Defense counsel, in fact, described S-1 as " . . . a[n] accurate statement of the law." (R. 69) Thus, the effect of granting S-1, even if the equivalent of taking the indictment to the jury room, was innocuous under the facts of this case. In this posture no error ensued from the denial of D-1.

ISSUE II.

THE VERDICT OF THE JURY WAS NEITHER BASED ON INSUFFICIENT EVIDENCE NOR AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

Moore contends the verdict of the jury was against the overwhelming weight of the

evidence because **(1)** both Moore and his mother testified that Moore was not the seller depicted in the video tape and Moore did not wear "doo rags" or gold jewelry; **(2)** David Wiley, the confidential informant, was paid $100 for every drug case he made, and **(3)** Wiley did not know the name of the person from whom he purchased the cocaine even though he had gone to school with Moore. (Brief of the Appellant at 1)

No matter.

Observation **(1)**, *supra,* created a conflict in the testimony which, of course, was a matter for the jury to resolve. It is elementary that "[t]he 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 774, 781 (Miss. 1993), and the many cases cited therein.

"Mere conflicting testimony is not enough for [an appellate court] to order a new trial." **Bullard v. State,** 923 So.2d 1043, 1048 (Ct.App.Miss. 2005), reh den, cert denied 927 So.2d 750 (2006).

Observations **(2)** and **(3)** also implicate credibility. The evidence implicating Larry Moore in the sale of crack cocaine consisted of the testimony of Investigator Hayes identifying Larry Moore as the seller depicted in the video (R. 51), the testimony of David Wiley who exchanged $40 for crack cocaine in a transaction that was hand to hand (R. 39-40), and the videotape itself which was viewed by the jury after Wiley described what took place on Winston Street. The seller depicted in the video is the man that delivered the cocaine to Wiley. (R. 40, 44)

> Q. [BY PROSECUTOR:] And the man that delivered that cocaine to you, is he here in the courtroom today?

A. Yes, sir.

Q. Would you point him out to the jury?

A. In the sweater. (Pointed)

Q. That is the man that sold you cocaine.

A. Yes, sir. (R. 40)

* * * * * *

Q. Looking at the defendant today, is there anything - - does he look the same to you as he did in that tape when you first made the buy on March 10, 2005?

A. He looked about the same. He may have lost a little weight. Other than that, that's . . .

Q. You are sure that is him.

A. Yes, sir. No doubt. (R. 42)

* * * * * *

Q. * * * And you are sure the man that sold you that, that crack cocaine on that day, the man that is in that video is the same as Mr. Moore.

A. Yes, sir. (R. 44-45)

Despite all this, Moore suggests that reasonable and fairminded men could not have found him guilty beyond a reasonable doubt because both he and his mother testified he was not the person depicted in the video selling cocaine. (Brief of the Appellant at 7-8) He asks rhetorically: "Who would know better to recognize an individual than one's own mother?" (Brief of the Appellant at 8)

We, in turn, ask: Who is the jury going to believe? The defendant and his mother or what it sees with its own eyes? *(See* R. 66-67 where the record reflects the video tape was replayed for the jury while Moore " . . . put his face by the video so they can see the video

right up next to his face.")

During closing argument defense counsel told the jury, *inter alia*, that

> " . . . it's going to all boil down to whether you believe that person on that tape is Larry Moore. They have given you the reasons that you should believe David Wiley. They have give you the reasons you should believe Gerald Hayes." (R. 74)

Classic jury issue.

In **Collier v. State,** 711 So.2d 458, 461, ¶ 11 (Miss. 1998), this Court re-articulated the standard of review for challenges to the sufficiency of the evidence as follows:

> "Our best statement of the standard of review for sufficiency of the evidence is as follows:
>
> > 'Our concern here is whether the evidence in the record is sufficient to sustain a finding adverse to [the defendant] on each element of the offense . . . In the present context we must, with respect to each element of the offense, consider all of the evidence - not just the evidence which supports the case for the prosecution - in the light most favorable to the verdict. The credible evidence which is consistent with the guilt must be accepted as true. The prosecution must be given the benefit of all favorable inferences that may reasonably be drawn from the evidence. Matters regarding the weight and credibility to be accorded the evidence are to be resolved by the jury. We may 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 v. State*, 503 So.2d 803, 808 (Miss. 1987) (citations omitted). If the evidence is found to be legally insufficient, then discharge of the defendant is proper. *May [v. State]*, 460 So.2d at 781.

The testimony and evidence in the case at bar pass the test re-articulated in **Collier**

with flying colors.

With respect to the "weight" of the evidence as opposed to its "legal sufficiency," such implicates the denial of a motion for a new trial. The motion for a new trial " . . . is addressed to the discretion of the court, which should be exercised with caution, and the power to grant a new trial should be invoked only in exceptional cases in which the evidence preponderates heavily against the verdict." **Bush v. State,** 895 So.2d 836, 844 (Miss. 2005).

That is not the case here.

It is a settled principle of law that the Supreme Court will order a new trial only when convinced the verdict of the jury is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice. **Withers v. State,** 907 So.2d 342 (Miss. 2005).

The case at bar simply does not exist in this posture.

It was true in **Bush v. State,** *supra*, 895 So.2d 836, 844 (Miss. 2005), and it is equally true here, that

> "[s]itting as a limited 'thirteenth juror' in this case, we cannot view the evidence in the light most favorable to the verdict and say that an unconscionable injustice resulted from this jury's rendering of a guilty verdict."

Same here. No abuse of judicial discretion has been demonstrated by Moore.

Larry Moore sought to convince the jury he was misidentified as the seller, either intentionally or mistakenly. He contends on appeal the identification testimony of the State's star witness, David Wiley, a confidential informant acting as an agent for the State, was sufficiently impeached at trial and was unworthy of belief. Moreover, he argues the video is "shaky and blurry," and the seller is wearing a "doo rag" on his head. (Brief of the

Appellant at 7-9) In this posture, suggests Moore, the evidence preponderates in favor of the defendant.

We respectfully submit this Court, in reviewing the sufficiency of the evidence, must look to the strength of the State's case - the accepted standard of review - as opposed to any weaknesses in the State's case suggested by Larry Moore. **Hill v. State,** 805 So.2d 371, 379-80, ¶ 31 (Ct.App.Miss. 2003).

The testimony of David Wiley, the State's undercover confidential source, was not so substantially impeached and discredited as to be unworthy of belief or inadmissible at trial. To the contrary, it was corroborated to the maximum degree by a video tape recording of the transaction, and the leading role was played by Larry Moore. (R. 40, 42-43) The imperfections of Wiley Jones, if any. went to the "weight" to give his testimony and not to its admissibility. It was a matter of credibility, and, without a doubt, the credibility of David Wiley was a matter for the jury to resolve.

Accepting as true the testimony of Wiley and Investigator Hayes and disregarding any evidence favorable to the defendant that he didn't sell cocaine to Wiley or to anyone else,

[i]t is abundantly clear the State's evidence was legally sufficient to support Larry Moore's conviction of the sale of cocaine.

Indeed, the question is not even close. **Kelly v. State,** 910 So.2d 535 (Miss. 2005); **Bridges v. State,** 716 So.2d 614 (Miss. 1998); **Turner v. State,** 573 So.2d 1335 (Miss. 1990); **Doby v. State,** 532 So.2d 584 (Miss. 1988); **Thurman v. State,** 726 So.2d 1226 (Ct.App.Miss. 1998).

The jury is not controlled by the number of witnesses testifying as to the identification of an accused. *See* **Passons v. State,** 239 Miss. 629, 124 So.2d 847, 848 (1960), where we

find the following language:

> The character and adequacy of evidence of identification of an accused in a criminal case is primarily a question for the jury, provided evidence could reasonably be held sufficient to comply with the requirement of proof beyond a reasonable doubt. **The jury need not be controlled by the number of witnesses testifying to the identification of an accused.** Identification based on the testimony of a single witness, if complying with the standard in criminal cases, can support a conviction, even though denied by the accused. The jury can appraise the truthfulness of an asserted alibi. In short, **positive identification by one witness of the defendant as the perpetrator of the crime may be sufficient as in the instant case.** 23 C.J.S. Criminal Law § 920, p.192. [emphasis ours]

In **Passons,** *supra*, the evidence sustained a conviction of armed robbery as against the defense of alibi.

The testimony of Wiley, even if uncorroborated and standing alone, would have been sufficient to support Moore's conviction for the sale of cocaine. *Cf.* **Blocker v. State,** 809 So.2d 640 (Miss. 2002); **Hill v. State,** *supra*, 805 So.2d 371, 379-80 (Ct.App.Miss. 2003).

This Court has long recognized that " . . . persons may be found guilty on the uncorroborated testimony of a single witness." **Doby v. State**, 532 So.2d 584, 591 (Miss. 1988). Where the single witness is a confidential informant, his/her uncorroborated testimony, much like that of an accomplice, will support a conviction so long as that testimony is not *unreasonable, improbable, self-contradictory, or impeached by unimpeached witnesses*. *Cf.* **Clemons v. State**, 535 So.2d 1354 (Miss. 1988), rev'd on other grounds, 110 S.Ct. 1441, 1108 L.Ed.2d 725 (1990); **Evans v. State**, 460 So.2d 824 (Miss. 1984); **Fairchild v. State**, 459 So.2d 793 (Miss. 1984); **Winters v. State**, 449 So.2d 766 (Miss. 1984); **Rainer v. State**, 438 So.2d 290 (Miss. 1983).

In the case at bar, the testimony of David Wiley, a confidential source as opposed to an accomplice, was none of the above. Admittedly, he was a hired gun, receiving $100 for every case that he made. Wiley denied receiving anything extra if a person was convicted. (R. 49) All of this was brought home to the jury. Despite any imperfections, a reasonable, hypothetical juror could have found Wiley's testimony quite credible.

In any event, lest we forget, Investigator Hayes also positively identified Moore as the seller depicted in the video exchanging, hand to hand, crack cocaine for $40.00 in cash. (R. 51)

In addition, there is also a wealth of corroboration on the video-tape recording depicting the sale as it went down. The videotape simply adds the final frosting to an already palatable cake. (R. 43-44)

All of this was legally sufficient to support Moore's conviction of the sale of cocaine. **Doby v. State**, *supra*, 532 So.2d 584, 590-91 (Miss. 1988) [Uncorroborated testimony of State's undercover agent was sufficient to support defendant's conviction for the sale of cocaine, even though defendant and his witnesses proffered an alibi as well as the likelihood of misidentification.] *See also* **Bridges v. State**, *supra*, 716 So.2d 614 (Miss. 1998) [Conviction of sale of cocaine was supported by audiotape of transaction between defendant and confidential source, expert testimony that substance was cocaine, and confidential source's testimony the defendant sold her cocaine]; **Thurman v. State**, *supra,* 726 So.2d 1226 (Ct.App.Miss. 1998) [Even without corroboration, informant's testimony that he purchased cocaine from defendant was sufficient to support his conviction.].

We reiterate. The identification of Moore as the seller was a jury issue. The jury watched the videotape of the transaction. (R. 43-44) The jurors elected to believe their own

eyes and ears as they watched the video tape recording and listened to the witnesses for the state.

Credibility of the witnesses, including David Wiley, the State's confidential source, and Hayes, who had known the defendant for ten (10) years, was a factual issue for the jury to resolve. **Doby v. State**, *supra*, 532 So.2d 584, 590-91 (1988); **Byrd v. State**, 522 So.2d 756, 760 (Miss. 1988).

"The jury is the *sole* judge of the weight and credibility of the evidence." **Byrd v. State**, *supra*, 522 So.2d 756, 760 (Miss. 1988) [emphasis supplied].

On appeal, of course, all the evidence, as a matter of law, is viewed in a light most favorable to the State's theory of the case. **McClain v. State**, 625 So.2d 774 (Miss. 1993). The testimony from a single credible witness is sufficient to sustain a conviction. **Holmes v. State**, 660 So.2d 1225 (Miss. 1995); **Doby v. State**, *supra*, 532 So.2d 584, 590-91 (Miss. 1988). The fact that David Wiley only knew the defendant as "Little Moore" (R. 47) and was a paid informant were prime topics during Moore's cross-examination of Wiley, the State's star witness. (R. 74-76)

Wiley's credibility was also the centerpiece of Moore's closing argument. (R. 74-76) In the final analysis, the credibility to attach to Wiley's identification of Larry Moore as the purveyor of coke was a matter for the jury to resolve.

Try as he might, Larry Moore cannot successfully demonstrate in this case the testimony of David Wiley was so incredible, improbable, and farfetched that no reasonable, hypothetical juror could find it worthy of belief.

To reverse this case in light of the facts presented would be an invasion of the province and prerogative of the jury who decided the question of guilt or innocence against

the defendant after listening to allegedly discredited testimony concerning the identity of the seller.

CONCLUSION

David Wiley, the confidential informant, was probably no Saint. Although he testified he was working for narcotics officers and received $100 for each case he made, he denied he had been offered any type of reward in exchange for his testimony against Larry Moore. (R. 49)

Wiley's testimony was both substantial and reasonable, as well as credible. Despite any character flaws and any other perceived imperfections, the credibility of Wiley was a matter for the jury, not a reviewing court, to evaluate and resolve.

A reasonable, fairminded, and hypothetical juror could have found from the State's evidence, including the videotape of the sale and the testimony of Gerald Hayes identifying Larry Moore as the seller, that Moore was guilty of the sale of crack cocaine.

Appellee respectfully submits that no reversible error took place during the trial of this cause. Accordingly the judgment of conviction of the sale of cocaine, together with the twelve (12) year sentence with four (4) years suspended imposed in this cause, should be forthwith affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Billy L. Gore, 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:

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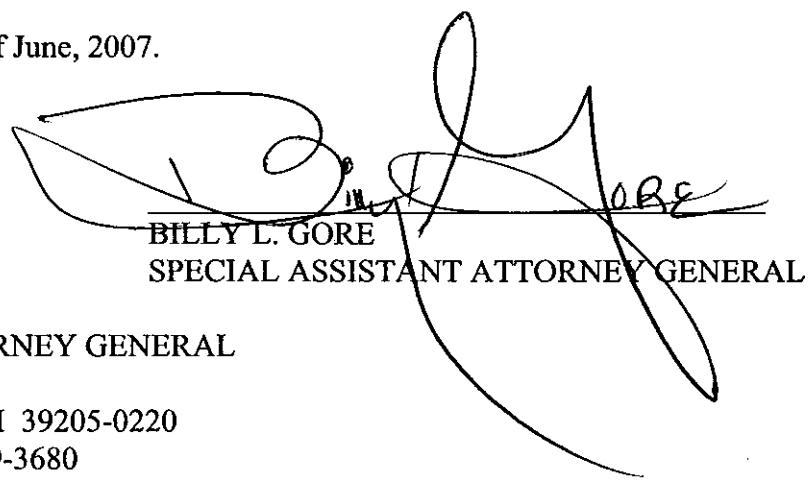
This the 4th day of June, 2007.



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