IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JEROME THORNTON — APPELLANT

VS. — NO. 2007-KA-2254-SCT

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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VS. **NO. 2007-KA-2254-SCT**

STATE OF MISSISSIPPI **APPELLEE**

BRIEF FOR THE APPELLEE

STATEMENT OF THE CASE

Following a routine traffic stop of appellant's automobile, a small rock of crack cocaine was found by law enforcement authorities underneath the front seat on the driver's side. Appellant, the owner of the car and its sole occupant at the time of the stop, search, and seizure by a deputy sheriff, contends the evidence was insufficient to convict him of cocaine possession, either constructively or actually.

JEROME THORNTON, a twenty-nine (29) year old African-American male and married resident of Horn Lake (R. 146; C.P. at 31), prosecutes a criminal appeal from his convictions of cocaine and marijuana possession returned in the Circuit Court of DeSoto County, Robert P. Chamberlin, Circuit Judge, presiding, after trial by jury conducted on November 27-28, 2007.

Following a three (3) count indictment returned on February 15, 2007, for conspiracy to transfer marijuana (Count 1), cocaine possession (Count 2), and marijuana possession (Count 3), Thornton was acquitted of conspiracy but convicted of cocaine and marijuana possession.

Only the cocaine conviction is assailed in this appeal.

Thornton was sentenced on December 17, 2007, to serve a term of eight (8) years in the custody of the MDOC on Count 2 (cocaine possession) with two-and-one-half (2½) years to serve and five-and-one-half (5½) years on PRS.

He was fined $250 on Count 3 (marijuana possession).

Thornton, who testified in his own behalf and denied having knowledge of the dope on the floor underneath the seat, invites this Court to reverse and render " . . . and the Appellant discharged from custody." (Brief of the Appellant at 8)

Thornton's indictment, omitting its formal parts, alleged that he and an unidentified co-defendant

> **(COUNT 1)** " . . . on or about the 30th day of August . . . 2006 . . . did wilfully, unlawfully and feloniously, corruptly agree, conspire and confederate, each with the other and with divers others to the Grand Jury unknown, to commit a crime, to-wit: Transfer of a Controlled Substance, to-wit: Marihuana, thirty (30) grams or less, in direct violation of Section 97-1-1(a), . . ." and
>
> **(COUNT 2)** " . . . on or about the 30th day of August . . . 2006 . . . did wilfully, unlawfully and feloniously, knowingly and intentionally possess a controlled substance, to-wit: Cocaine, one-tenth (0.1) gram but less than two (2) grams, in direct violation of Section 41-29-139 . . ." and
>
> **(COUNT 3)** " . . . on or about the 30th day of August . . . 2006 . . . did wilfully and unlawfully, knowingly and intentionally possess a controlled substance, to-wit: Marihuana, thirty (30) grams or less in direct violation of Section 41-29-139 . . ."

Following trial by jury conducted on November 27-28, 2007, the jury acquitted Thornton of conspiracy but found him guilty of both marijuana and cocaine possession.

Only one (1) issue is raised on appeal to this Court:

"The evidence was insufficient to support the verdict of guilty of possession of cocaine

because the State failed to prove the defendant was in constructive possession." (Brief of the Appellant at 5)

STATEMENT OF FACTS

During the late afternoon hours on August 30, 2006, Sergeant John Alexander, DeSoto County Sheriff's Department, was on routine patrol when he made the following observations:

> A. I was in the area of 301, 302. It's the northwest side of the county over at 61 Highway, old 61. While proceeding westbound on 302, I observed Mr. Thornton's vehicle. Two weeks prior, I observed this vehicle at a residence on Tulane looking for another subject we were trying to locate, and during that time, I ran his driver's license, which were found to be suspended. I was proceeding on 302 westbound across 61. His vehicle stuck out. It was an 87 model Oldsmobile, four-door, blue, faded. It just - - as soon as I saw it, it caught my eye. There was also a small passenger vehicle there. A white female got out and walked over to Mr. Thornton's vehicle, and there was an exchange. Due to the high traffic area, most people - -
>
> Q. [BY PROSECUTOR:] What do you mean by exchange?
>
> A. The hand - - it wasn't a handshake. There was something. I could not identify in the distance what it was.
>
> Q. Did something - - did you perceive that something passed from hand to hand - -
>
> A. Yes, ma'am.
>
> Q. - - a handshake or what?
>
> A. Yes, ma'am.
>
> Q. Okay. Yes, ma'am, to which part?
>
> A. It appeared to be an exchange of some sort. (R. 101-02)

Alexander observed both the male and female looking from side to side. Because this was a high traffic area for narcotics, Alexander followed the defendant's vehicle and subsequently

stopped it for tailgating.

"He was behind a vehicle extremely too close." (R. 102)

Alexander questioned Thornton about his suspended driver's license and then asked if there were any narcotics inside the car.

> A. * * * He goes. "No," and he looked at me for a few seconds, and he goes, "Well, I'm going to be honest with you," and he reaches up in the center console in the vents, the double vents on the vehicle, and he pulls one completely out. It just popped out very easily. He reached in and grabbed a bag which contained a green, leafy substance, known to be marihuana. I think it's marked as Exhibit 1. (R. 103)

After voluntarily surrendering the bag of marijuana to Sergeant Alexander, Thornton gave the officer permission to search the car. On the second sweep through the interior, Alexander found a small white rock of crack cocaine "[d]irectly under the driver's seat." (R. 105)

Thornton was placed under arrest and taken to the station house where, after being advised of his rights, he wrote a handwritten statement admitting, *inter alia*, that after being stopped he gave Sergeant Alexander a bag of weed and sat on the back of his car while Alexander searched it.

According to the statement, "[Alexander] found a piece of crack, put me in handcuffs, and sat me in the police car." (R. 113)

Thornton, who testified in his own behalf, freely admitted he owned the car and was its sole occupant at the time of the search but denied he was aware of the presence of the rock of crack cocaine.

> Q. [BY DEFENSE COUNSEL:] All right. And did you tell him it wasn't yours?
>
> A. Yeah. (R. 152)

The State produced two witnesses during its case-in-chief, including **Sergeant John**

Alexander who identified Thornton in court as the man in possession of contraband. (R. 100-01)

Eric Frazure, a forensic scientist specializing in "forensic drug analysis," testified the evidence submitted to the regional laboratory in Batesville for identification consisted of 0.3 grams of cocaine base and 2.0 grams of marijuana. (R. 134-36)

Both are controlled substances. (R. 134-36)

At the close of the State's case-in-chief, Thornton made a motion for a directed verdict of acquittal on all three counts on the general ground " . . . the State has wholly failed to establish sufficient evidence to get to the jury on any of the three charges." (R. 137)

The motion was overruled with the following observations:

> By THE COURT: All right. Regarding the Motion for Directed Verdict which have been made *ore tenus* by the Defendant in this cause, the motion will be denied at this time. First and foremost, regarding the marijuana issue, that doesn't seem to be very much at issue at all in that the Defendant did hand the contraband to the officer. Certainly, Mr. Jones, on behalf of the Defendant, has made applicable arguments regarding the search and seizure issues, and they have been dealt with by the Court. So having said that, those aside, the State has certainly set forth sufficient evidence in that regard.
>
> The main issue considered by the Court regarding the cocaine was the issue of the constructive possession. During the break, I took the opportunity to further research the issue, and Mississippi law is clear. If you are the owner in possession of a vehicle, it is presumed that you are in constructive possession of any contraband contained therein. That presumption is rebuttable. Certainly at this point, it has not been rebutted or attempted to be rebutted, and further, it does not relieve the State of any of their requirements that they prove their case against the Defendant beyond a reasonable doubt, which, except for the issue of constructive possession, the Court finds they've made a *prima facie* case in that regard. * * * (R. 139-40)

After being advised of his right to testify or not (R. 141-42), **Jerome Thornton** testified in his own behalf and admitted the automobile he was driving was registered to him and that he was

the lone occupant at the time of the stop, search, and seizure. (R. 154-55) Thornton denied knowing anything about the small rock of crack cocaine that Sergeant Alexander found underneath the front seat on the driver's side. (R. 180)

Thornton testified he had marijuana because he was smoking [using] it at the time. (R. 157-58) He also claimed that Sergeant Alexander set him up

> Q. [REDIRECT EXAMINATION:] All right. Do other people use [your car] with you?
>
> A. Yeah.
>
> Q. Your brother?
>
> A. Yeah.
>
> Q. Who else?
>
> A. My cousin, my wife. (R. 184)

At the close of all the evidence, Thornton's renewed motion for a directed verdict made on the ground " . . . there was, *inter alia*, no basis for conspiracy to sell drugs," was denied. (R. 187, 191-92)

Peremptory instruction was also denied. (R. 195; C.P. at 65-67)

The jury retired to deliberate at 10:46 a.m. (R. 239) and returned two and one half (2 ½) hours later with the following verdicts:

> "We, the Jury, find the Defendant not guilty in Count 1."
>
> "We, the Jury, find the Defendant, Jerome Thornton, guilty of possession of Cocaine in Count 2."
>
> "We, the Jury find, the Defendant, Jerome Thornton, guilty of possession of marihuana in Count 3." (R. 242; C.P. at 82)

A poll of the jury was not taken. (R. 242-43)

Sentencing was deferred until December 17, 2007, at which time Judge Chamberlin, following his review of a prior conviction and testimony proffered in mitigation from the defendant's wife, sentenced Thornton to serve a total of eight (8) years in the custody of the MDOC with two and a half (2½) years incarceration followed by five and one half (5½) years of PRS. (R. 250-63; C.P. at 93-96)

On December 4, 2007, Thornton filed a motion for judgment notwithstanding the verdict or, in the alternative, for a new trial. He alleged, *inter alia,* the verdict of the jury was against the overwhelming weight of the evidence, and the verdict of the jury had no legal basis. (C.P. at 84-85)

The motion for JNOV and for a new trial was overruled on December 17, 2007. (R. 252-53; C.P. at 86)

Jack Jones, a practicing attorney in Southhaven, rendered effective assistance during Thornton's trial for possession of cocaine. Justin Cook, an attorney with the Mississippi Office of Indigent Appeals, has been substituted on appeal. Mr. Cook's representation on appeal has been equally effective.

SUMMARY OF THE ARGUMENT

The trial judge did not err in overruling Thornton's motion for a directed verdict, peremptory instruction or for JNOV. This is not a case where reasonable and fairminded jurors could only have found the defendant not guilty.

"Taking the evidence in the light most favorable to support the [jury's] verdict, the question is not whether the court believes the evidence established guilt beyond a reasonable doubt but whether a rational trier of fact could have found all the elements beyond a reasonable doubt." **Jefferson v. State,** 964 So.2d 615, 618 (¶10) (Ct.App.Miss. 2007) citing **Bush v. State,** 895 So.2d 836, 844 (¶16) (Miss. 2005).

A reasonable and fairminded juror could have found from the testimony and evidence that the single, small, rock of crack cocaine found underneath the driver's seat of Thornton's motor vehicle was constructively in the possession of Thornton who owned the automobile and was its sole occupant at the time of the seizure. **Robinson v. State,** 967 So.2d 695 (Ct.App.Miss. 2007) and the cases cited therein.

A presumption of constructive possession arose based upon Thornton's ownership of the automobile in which the contraband was found. **Hamburg v. State,** 248 So.2d 430, 432 (Miss. 1971). *See also* **Fultz v. State,** 573 So.2d 689 (Miss. 1990); **Fuente v. State,** 744 So.2d 284 (Ct.App.Miss. 1999). *Cf.* **Boches v. State,** 506 So.2d 254 (Miss. 1987).

A reasonable and fairminded hypothetical juror could have found that Thornton possessed, constructively, if not actually, the loose contraband.

We agree with Judge Chamberlin that Thornton's guilt or innocence was a jury issue. (R. 190-91) The presumption of possession plus other incriminating circumstances, particularly Thornton's voluntary, handwritten confession, were sufficient to warrant a jury in finding that Thornton exercised dominion and control over the contraband, was aware of the presence and character of the contraband, and was intentionally and consciously in possession of the contraband.

In short, there was enough evidence, which if true, was sufficient to prove that Thornton both "knowingly" and "intentionally" possessed the cocaine.

ARGUMENT

THE TRIAL JUDGE DID NOT ERR IN OVERRULING THORNTON'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT.

Thornton claims the State failed to prove beyond a reasonable doubt he possessed, either actually or constructively, a small, single rock of crack cocaine found underneath the driver's seat

of his privately owned vehicle following a routine traffic stop for tailgating. (Brief of Appellant at 5-8)

In short, Thornton argues the verdict returned by the jury was based on insufficient evidence. He assails the sufficiency, as opposed to the weight, of the evidence used to convict him.

This is a case involving controlled substances found in schedules I and II, the possession of which is prohibited by Miss.Code Ann. §41-29-139(c). Specifically, Thornton claims "[t]he State failed to prove constructive possession because it could not show Thornton exercised dominion or control over the cocaine or that he knowingly and intentionally possessed the cocaine." (Brief of the Appellant at 8)

Thornton places great weight upon his testimony at trial that "the vehicle in which the contraband was found was also used by his brother, cousin, and wife [and] [a]ny one of the other people using the vehicle could have left the cocaine under he driver's seat." (Brief of the Appellant at 7)

In this posture, says Thornton, he successfully rebutted the presumption that the cocaine found underneath the driver's seat was in his exclusive possession or control. (Brief of the Appellant at 7)

These identical arguments were made and rejected in **Robinson v. State,** *supra,* 967 So.2d 695, 699 (Ct.App.Miss. 2007), where drugs were found inside the trunk of Robinson's automobile. Robinson, who owned the automobile and was its sole occupant at the time of the seizure, claimed the evidence was insufficient to support his conviction for possession because others had access to his car, namely his nephew. The Court of Appeals ruled otherwise as follows:

> The question before this Court is whether a rational person, when viewing the evidence in the light most favorable to the State, could have found that the State proved all the elements of drug

possession against Robinson. *Dilworth v. State,* 909 So2d at 737 (¶19) (Miss. 2005). We are to review cases of this nature under an abuse of discretion standard. *Howell v. State,* 860 So.2d at 764 (¶212) (Miss. 2003).

In *Wall v. State,* 718 So.2d 1107, 1111 (¶13) (Miss. 1998), the court observed that, with regard to contraband found in a vehicle, that "the owner of a vehicle is presumed to be in constructive possession." In the case *sub judice,* the drugs were found in Robinson's trunk. Robinson was the owner of the car. These drugs are presumed to be in Robinson's constructive possession unless otherwise rebutted. *Spencer v. State,* 908 So.2d 783, 788 (¶14) (Miss.Ct.App. 2005) (quoting *Powell v. State,* 355 So.2d 1378, 1379 (Miss. 1978)). Robinson maintains that the car was not in his exclusive possession because others had access to his car, namely his nephew, Wilson. The only substantial evidence introduced to rebut the presumption was the testimony of Wilson. Wilson or another person could have been the source of the drugs found in Robinson's trunk, however this was a question for the jury to determine from all the evidence presented. The court in *Wolf v. State,* 260 So.2d 425, 432 (Miss. 1972) noted:

> the defendant's testimony, and all of the circumstances relied upon by appellant to show that other people could have placed the marijuana in the automobile were factors to be considered by the jury, and the jury could have accepted defendant's testimony that he did not know marijuana was in his automobile.

In the case *sub judice,* the State presented additional evidence to the jury aside from Robinson's proximity to the drugs for it to determine he was in constructive possession. Robinson was both the sole occupant and owner of the car when the drugs were found. * * *

Our review of the record indicates there was sufficient evidence for the jury to find Robinson did, in fact, have constructive possession of the drugs found in his car. There was a sufficient amount of other incriminating evidence which connected Robinson to the drugs in order [for] the jury to find Robinson guilty. For the foregoing reasons, we cannot find error in the decision of the trial court denying the motion for a JNOV and we, accordingly, affirm. 967 So.2d at 699-700.

Identical scenario and identical result here. The **Robinson** rational is controlling.

All of this, of course, was a jury issue, and the jury was instructed accordingly. *See* jury instruction #13 (S-4) which placed the question of constructive possession squarely in the lap of the fact finder.

Thornton laments that "[b]ecause [he] was not in exclusive control or possession of the vehicle the State was required to show additional incriminating circumstances linking the defendant to the contraband." (Brief of the Appellant at 8)

It did. More on this shortly.

We respectfully submit there was ample testimony from which a reasonable and fairminded hypothetical juror could find that Thornton constructively, if not actually, possessed the contraband found underneath the driver's seat where Thornton, as sole occupant, had just been sitting.

Thornton was both the owner and the sole occupant of the automobile in which the cocaine was found. He had just discussed a drug transaction with an unidentified female when he was stopped by a deputy for tailgating.

"[O]ne who is the owner in possession of the premises, or the vehicle in which contraband is kept or transported, is presumed to be in constructive possession of the articles found in or on the property possessed." **Hamburg v. State,** 248 So.2d 430, 432 (Miss. 1971), and the many cases cited therein.

Although this presumption is rebuttable, there are insufficient facts in the present record that would cause the presumption to give way.

Aside from the fact that the cocaine was located directly underneath where Thornton had been sitting, i.e., the proximity factor, there were other incriminating factors demonstrating dominion and control.

1. Thornton was both the registered owner and sole occupant of the car where the cocaine

was found.

2. Thornton voluntarily surrendered marijuana to Sergeant Alexander.

3. Thornton's voluntary handwritten statement reflects that Thornton had received a telephone call from a person who wanted " . . . an ounce of weed and 50 in crack. I told them I had neither, but if they meet me and give me money I could go get it." (R. 112)

4. Equally incriminating is Thornton's rendezvous with the unidentified female and the hand-to-hand exchange.

5. Likewise with respect to the four (4) twenty dollar bills - buy money, if you please - that Thornton, minutes later, pulled out of his right front pocket and handed to Sergeant Alexander.

6. Finally, Thornton's reference in his handwritten statement that Alexander "found a piece of crack" was particularly probative. His awareness was months before anyone else knew for certain it was cocaine. Forensic testing later identified the substance as cocaine base.

The bottom line is that Thornton said in his handwritten statement he was going to purchase marijuana and cocaine for a girl and took money from her for that purpose. Both marijuana and cocaine were already present inside his car.

This is clearly not a case where the facts show actual possession to be in other users especially where, as here, none of the other alleged users - brother, cousin, or wife - testified in this cause. It was true in the **Robinson** decision, and it is equally true here, that the only substantial evidence introduced to rebut the presumption of constructive possession was the testimony of Thornton himself.

The jury was instructed, *inter alia*, that in order to find Thornton guilty of possession,

> " . . . there must be sufficient facts to warrant a finding by the jury that the Defendant was aware of the presence and character of the

> substance and was intentionally and consciously in possession of the substance. It need not be actual physical possession. Constructive possession may be shown by establishing that the substance was subject to the Defendant's dominion or control." (Instruction S-4 - R. 193; C.P. at 60)

There were, he was, and it was.

Possession of a controlled substance may be either actual, constructive, individual or joint. **Wolf v. State,** 260 So.2d 425, 432 (Miss. 1972).

"Constructive possession allows the prosecution to establish possession of contraband when evidence of actual possession is absent." **Fuente v. State,** 734 So.2d 284, 288 (Ct.App.Miss. 1999), quoting from **Roberson v. State,** 595 So.2d 1310, 1319 (Miss. 1992).

We submit the identity of Thornton, as either actual or constructive possessor of contraband, was supplied by reasonable inferences drawn from all the evidence and from incriminating circumstances, including ownership, occupancy, and the proximity factor.

A jury could have inferred that Thornton was well aware of the presence and character of the cocaine found directly underneath him and that he consciously and intentionally possessed it.

Judge Chamberlin applied the correct legal standard in denying Thornton's motion and renewed motion for a directed verdict. (R. 137-140, 186-87)

"When sufficiency of the evidence is challenged on appeal this Court properly should review the Circuit Court's ruling on the last occasion when the sufficiency of the evidence was challenged before the trial court." **Wetz v. State,** 503 So.2d 803, 808, note 3 (Miss. 1987). In the case *sub judice*, the circuit court's ruling on the last occasion when the sufficiency of the evidence was assailed was the motion for judgment notwithstanding the verdict (C.P. at 84-86) but, if not, the motion for directed verdict made at the close of all the evidence. (R. 187-88)

Both were properly denied. Indeed, there can be no question about it.

In judging the legal sufficiency, as opposed to the weight, of the evidence on a motion for a directed verdict or request for peremptory instruction or motion for judgment notwithstanding the verdict, the trial judge is required to accept as true all of the evidence that is favorable to the State, including all reasonable inferences that may be drawn therefrom, and to *disregard* evidence favorable to the defendant. **Hubbard v. State,** 819 So.2d 1192 (Miss. 2001), reh denied; **Yates v. State,** 685 So.2d 715, 718 (Miss. 1996); **Ellis v. State,** 667 So.2d 599, 612 (Miss. 1995); **Clemons v. State,** 460 So.2d 835 (Miss. 1984); **Forbes v. State,** 437 So.2d 59 (Miss. 1983); **Bullock v. State,** 391 So.2d 601 (Miss. 1980). *See also* **Jones v. State,** 904 So.2d 149, 153-54 (Miss. 2005) ["The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."]

This includes the testimony of Thornton who denied possession.

If under this standard, sufficient evidence to support the jury's verdict of guilty exists, the motion for a directed verdict, request for peremptory instruction or motion for JNOV should be overruled. **Brown v. State,** 556 So.2d 338 (Miss. 1990); **Davis v. State,** 530 So.2d 694 (Miss. 1988).

A finding the evidence is insufficient results in a discharge of the defendant. **May v. State,** 460 So.2d 778, 781 (Miss. 1984).

The evidence, together with all reasonable inferences to be drawn therefrom, was, in our opinion, legally sufficient to support Thornton's conviction of possession.

One has constructive possession of a controlled substance when it is subject to his dominion and control. **Williams v. State,** 892 So.2d 272 (Ct.App.Miss. 2004) reh denied, cert denied 901

So.2d 1273. Thornton, as stated previously, was the sole occupant and the owner of the vehicle where the dope was found.

The ground rules governing constructive possession are applicable here.

The burden is upon the State of Mississippi to prove the defendant had knowledge of the character of the contraband and that he was either in actual or constructive possession of same. These elements may be proved by circumstantial evidence. **Martin v. State,** 413 So.2d 730, 732 (Miss. 1982). *See also* **United States v. Pigrum,** 922 F.2d 249 (5th Cir. 1991).

This Court has often said that a substance is within one's constructive possession when it is subject to his dominion or control. **Keys v. State,** 478 So.2d 266, 268 (Miss. 1985).

In **Curry v. State,** 249 So.2d 414, 416 (Miss. 1971), a prosecution for the possession of marijuana, this Court defined the contours of the constructive possession rule as follows:

> What constitutes a sufficient external relationship between the defendant and the narcotic property to complete the concept of "possession" is a question which is not susceptible of a specific rule. However, there must be sufficient facts to warrant a finding that defendant was aware of the presence and character of the particular substance and was intentionally and consciously in possession of it. It need not be actual physical possession. Constructive possession may be shown by establishing that the drug was subject to his dominion or control. Proximity is usually an essential element, but by itself is not adequate in the absence of *other incriminating circumstances.* In the instant case, all of the circumstances and these criteria were sufficient to warrant the jury in finding that appellant was in possession of the marijuana. [citations omitted; emphasis ours]

Additional incriminating facts, i.e., "other incriminating circumstances," available for the jury's consideration have been stated elsewhere in our response.

In **Fultz v. State,** 573 So.2d 689, 690 (Miss. 1990), we find the following language describing the contours of constructive possession:

> The doctrine of constructive possession is a legal fiction used by courts when actual possession cannot be proven. Relying on *Curry v. State*, 249 So.2d 414 (Miss. 1971), commentators Whitebread and Stevens classified Mississippi among the jurisdictions in which "proximity" coupled with any other scintilla of evidence of possession established constructive possession. *See, generally*, C. Whitebread & R. Stevens, Constructive Possession, 58 Va.L.Rev. 751, n. 26 (1972). In that case, this Court adopted the fiction and articulated the test to be applied to the proof as follows:
>
> > there must be sufficient facts to warrant a finding that defendant was aware of the presence and character of the particular substance and was intentionally and consciously in possession. Constructive possession may be shown by establishing that the drug involved was subjected to his *dominion or control.* Proximity is usually an essential element, *but by itself is not adequate in the absence of other incriminating circumstances. Curry v. State*, 249 So.2d 414, 416 (Miss. 1971). (Emphasis added)

In **Fultz** evidence that marijuana was found inside the trunk of the automobile being driven, but not owned, by Fultz and that the defendant had a small amount of marijuana in his wallet was not sufficient to establish that Fultz constructively possessed the marijuana found inside the trunk of the vehicle.

Not so in the case at bar where Thornton was both the owner of the vehicle and its sole occupant. *See also* **Hamburg v. State,** *supra,* 248 So.2d 430, 432 (Miss. 1971); **Fuente v. State,** *supra,* 744 So.2d 284 (Ct.App.Miss. 1999). *Cf.* **Boches v. State,** *supra,* 506 So.2d 254 (Miss. 1987).

What standards are applied by a reviewing court in reviewing the often raised questions involving the legal sufficiency of the evidence?

In **Bush v. State,** 895 So.2d 836 (Miss. 2005), the Supreme Court re-articulated the standards applied by a reviewing Court in reviewing the sufficiency of the evidence.

"If a review of the evidence reveals that it is of such quality and weight that, 'having in mind

the beyond a reasonable doubt burden of proof standard, reasonable fair-minded men in the exercise of impartial judgment might reach different conclusions on every element of the offense,' the evidence will be deemed to have been sufficient." **Bush v. State,** *supra,* 895 So.2d at 843.

Our position on this issue can be summarized in only three (3) words: "classic jury issue." Indeed, Judge Chamberlin said as much. (R.191-92)

CONCLUSION

A reasonable and fairminded juror could have found from the evidence that Jerome Thornton, owner and sole occupant of the motor vehicle in which the drugs were found, constructively, if not actually, possessed the rock of crack cocaine found underneath the seat on the driver's side.

The jury was certainly not bound to accept the testimony of young Thornton that his brother, cousin, and wife also used his motor vehicle. None of them testified this was so.

A reasonable and fairminded juror could have found that at the time Sergeant Alexander discovered the cocaine it was possessed constructively, if not actually, by Thornton who was aware of its presence and character and was intentionally and consciously in possession of it.

Contrary to Thornton's position, there were additional incriminating circumstances connecting Thornton with the contraband.

Appellee respectfully submits no reversible error took place during the trial of this cause. Accordingly, the judgment of conviction of two counts of possession of controlled substances, together with the eight (8) year sentence and monetary fine imposed by the trial judge, should be affirmed. (R. 259-60; C.P. 93-96)

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 20th day of October, 2008.

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