

**COPY**

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**CALVIN JEFFERSON**

**FILED**

**APPELLANT**

**AUG 21 2008**

**OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS**

**VS.**

**NO. 2008-KA-0239**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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**IN THE COURT OF APPEALS OF MISSISSIPPI**

**CALVIN JEFFERSON**

**APPELLANT**

**VERSUS**

**NO. 2008-KA-0239-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR APPELLEE**

**STATEMENT OF THE CASE**

**Procedural History**

Calvin Jefferson was convicted in the Circuit Court of Calhoun County on a charge of sale of cocaine and was sentenced to a term of 20 years in the custody of the Mississippi Department of Corrections with four years suspended. (C.P.52) Aggrieved by the judgment rendered against him, Jefferson has perfected an appeal to this Court.

**Substantive Facts**

Amory "Bubba" Willard testified that at the time in question, he was a deputy sheriff for the Calhoun County Sheriff's Department.<sup>1</sup> Mr. Willard testified that on December 8, 2005, Daniel Hardin telephoned him to report that Jefferson had been "calling him wanting to sell him some crack cocaine." At six o'clock that evening, Mr. Willard and Agent Tim

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<sup>1</sup>At the time of trial, Mr. Willard was employed by the Mississippi Department of Corrections. (T.129)

Hamilton "met him [Hardin] in a disclosed location in the rural part of the county." (T.129-

30) Mr. Willard described the ensuing events as follows:

Agent Hamilton furnished the buy money that was used furnished by his agency, official U.S. state currency of \$40. He recorded the proper information that is required by his agency to identify the money.

During the time he was doing the paperwork, I conducted a search of the informant's vehicle and of him also to make sure there wasn't any contraband available to him or on his person or in his vehicle. Everything checked clear. I installed audio and video equipment in the vehicle with the assistance of Agent Hamilton after he completed his duties with the paperwork and issuing the money.

\* \* \* \* \*

We left, give [sic] the informant brief instructions on any operation that was conducted as what to do and how to do it to meet the criteria; and we left the meeting location. Informant left in front of us, and we followed some short distance behind him into Bruce. Informant went to the car wash beside the city shop of Highway 9 on the south end of town. He made contact with the defendant there at the car wash.

(T.131)

Situated less the half a mile from the informant, the deputy and the agent were able to hear the conversation between Hardin and Jefferson. When the prosecutor asked, "Then what happened?" Mr. Willard testified that Hardin "gave the defendant the money," and that Jefferson then "left the car wash and traveled back toward Bruce and went over in the area known as "the quarters." Some 20 minutes later, "the deal went down." Jefferson returned to the car wash and stated that "he wanted to get in the truck with the informant and ride around, and there was some talk about smoking, and the informant wouldn't allow it. He told him he couldn't do it." (T.131-32) Mr. Willard went on to testify,

So during that time, according to the video and the information that was obtained from the informant, the defendant placed the drugs, the crack cocaine, on the hood of the truck; and the informant picked it up. At that time there was some still conversation about wanting us to get high and wanting to smoke some of the crack cocaine, and the informant wouldn't allow it.

\* \* \* \* \*

The defendant kept wanting some of the dope. The informant after he picked it up to try to get away from there and get away from the informant— sometimes it does happen sometimes it doesn't—the defendant got a small piece of crack cocaine.

\* \* \* \* \*

The informant and the defendant left the car wash. We were informed by way of the audio transmitter that was placed on the informant that the deal was completed and he was on the way back to the meeting location that we had instructed him to come back to. We met the informant at that location. Agent Hamilton received the evidence that we had purchased, the crack cocaine, and took it in his possession and took a statement from the informant; and during the time that that was being done, I collected the equipment from the informant out of the informant's vehicle.

(T.132-33)

After the substance was packaged and labeled, "Agent Hamilton transported it back to the Starkville district office with him. ... [I]t was placed into [an] evidence locker ... and transported to the Mississippi State Crime Lab for analysis." (T.134)

Agent Hamilton corroborated Mr. Willard's testimony. (T.135-36)

Hardin, a 36-year resident of Calhoun County, testified that at some prior to December 2005, he had developed a "drug problem" and decided that he wanted to become a confidential informant. He became associated in this role with the sheriff's department and the Bureau of Narcotics on December 8, 2005. (T.76-77)

Hardin went on to testify that Calvin Jefferson had called him "several times" offering to sell him drugs. After Hardin reported this information to Bubba Willard and Tim Hamilton, he had a meeting with the agents and was outfitted with "a wire ... and a camera." The agents searched Hardin as well as his vehicle. Hardin then "drove to a location" and gave Jefferson "the money," \$40 in state funds, in exchange for a package of what appeared to be cocaine. (T.77) Hardin elaborated that he gave the money to Jefferson at the car wash, and that Jefferson "said he would go and get the cocaine and bring it back." Some ten to 15 minutes later, Jefferson returned, placed the drugs on the hood of the truck, and "asked for some part of the drugs" in exchange for his having procured them. Hardin "told him no," but Jefferson "kept persisting." Finally, "he got what little he wanted," and Jefferson "returned to the prelocation with Mr. Willard and Mr. Tim." (T.80-82)

The state's expert witness testified that he had examined the exhibit in question and determined that it was cocaine weighing .22 grams. (T.126)

Jefferson testified that he had "smoked dope" with Hardin many times. According to Jefferson, Hardin called him that day to report that "he had a 40, and he wanted to smoke it," and that he told Jefferson "to come to the car wash." Asked why he left car wash, he testified that he had gone to retrieve his pipe. When he returned, he tried to get into Hardin's truck, but Hardin "said, No." After Jefferson "kept on at him about smoke something," Hardin gave him "a piece." Jefferson "went right to smoking it." (T.140-42)

On cross-examination, Jefferson had difficulty explaining why, if Hardin had indeed invited him to smoke, that he had forgotten his crack pipe. (T.145)

## SUMMARY OF THE ARGUMENT

The trial court did not abuse its discretion in denying the motion for new trial. The credibility of the witnesses was properly resolved by the jury.

### PROPOSITION ONE:

#### THE VERDICT IS NOT CONTRARY TO THE OVERWHELMING WEIGHT OF THE EVIDENCE

The sole issue presented on this appeal is whether the trial court erred in overruling the motion for new trial on the ground that the verdict is against the overwhelming weight of the evidence. (C.P.34, 37) To prevail on this point, Jefferson must satisfy the rigorous standard set out below:

The standard of review in determining whether a jury verdict is against the overwhelming weight of the evidence is well settled. "[T]his Court must accept as true the evidence which supports the verdict and will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial." *Dudley v. State*, 719 So.2d 180, 182(¶ 8) (Miss.1998). On review, the State is given "the benefit of all favorable inferences that may reasonably be drawn from the evidence." *Griffin v. State*, 607 So.2d 1197, 1201 (Miss.1992). "Only in those cases where the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice will this Court disturb it on appeal." *Dudley*, 719 So.2d at 182 . **"This Court does not have the task of re-weighing the facts in each case to, in effect, go behind the jury to detect whether the testimony and evidence they chose to believe was or was not the most credible."** *Langston v. State*, 791 So.2d 273, 280 (¶ 14) (Miss. Ct. App. 2001).

(emphasis added) *Smith v. State*, 868 So.2d 1048, 1050-51 (Miss. App. 2004),

Furthermore,

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



believed. [citation omitted] The jury has the duty to determine the impeachment value of inconsistencies or contradictions as well as testimonial defects of perception, memory, and sincerity. *Noe v. State*, 616 So.2d 298, 302 (Miss.1993) (citations omitted). **"It is not for this Court to pass upon the credibility of witnesses and where evidence justifies the verdict it must be accepted as having been found worthy of belief."** *Williams v. State*, 427 So.2d 100, 104 (Miss.1983).

(emphasis added) *Ford v. State*, 737 So.2d 424, 425 (Miss. App. 1999).

It has been "held in numerous cases that the jury is the sole judge of the credibility of the witnesses and the weight to be attached to their testimony." *Kohlberg v. State*, 704 So.2d 1307, 1311 (Miss.1997). As the Mississippi Supreme Court recently reiterated in *Hales v. State*, 933 So.2d 962, 968 (Miss.2006), criminal cases will not be reversed "where there is a straight issue of fact, or a conflict in the facts..." [citations omitted] Rather, "juries are impaneled for the very purpose of passing upon such questions of disputed fact, and [the Court does] not intend to invade the province and prerogative of the jury." [citations omitted]

The state respectfully submits that Jefferson's challenge to the weight of the evidence presented is essentially an improper attempt to relitigate factual issues, including credibility of the witnesses, properly resolved by the jury. Specifically, the state submits the impeachment value of the testimony brought out on cross-examination of Hardin was for the jury to determine. Moreover, the state points out that Hardin's testimony was corroborated by that of Mr. Willard and Agent Hamilton. Incorporating by reference the facts set out under the Statement of Substantive Facts, the state asserts the trial court did not abuse its discretion in overruling the motion for new trial. The evidence is not such that allowing the verdict to stand would be to sanction an unconscionable injustice.

Jefferson goes on to assert that “[n]o money was exchanged on the video and it was unclear whether drugs were transferred.” (Brief for Appellant 7) As shown by the following analysis, this fact is not conclusive:

Steen directs our attention to deficiencies in the videotape. Specifically, Steen argues that the tape does not depict the exchange of cocaine and money. We agree with Steen's assertion that there is no video footage of the actual transaction of drugs and money. However, this fact alone does not lessen the effect of Kimble's testimony explicitly describing the illicit transaction. In *Wilks v. State*, 811 So.2d 440, 445 (¶ 17) (Miss. Ct. App. 2001), this Court declined to accept a similar argument. As in this case, *Wilks* involved a controlled buy where audio and video equipment were used. Like Steen, Wilkes also challenged the weight of evidence because the videotape “[did] not show the two exchanging money or crack cocaine.” We held that “[w]hile the videotape may not be conclusive proof as to what transaction took place, it certainly is not contrary to the State's case, which was corroborated by [the confidential informant's testimony.” *Id.* at (¶ 19). We find no error.

*Steen v. State*, 873 So.2d 155, 159 (Miss. App. 2004).

Accord, *Miller v. State*, 983 So.2d 1051 (Miss. 2008).

Likewise, in this case, the informant testified expressly that the defendant sold cocaine to him. Furthermore, his testimony was corroborated by that of the deputy and the agent. Evaluation of Hardin's credibility was within the sole province of the jury. No basis exists for disturbing the jury's verdict.

**CONCLUSION**

The state respectfully submits that the arguments presented by Jefferson are without merit. Accordingly, the judgment of the circuit court should be affirmed.

Respectfully submitted,

**JIM HOOD, ATTORNEY GENERAL  
STATE OF MISSISSIPPI**

  
\_\_\_\_\_  
BY: DEIRDRE McCRORY  
SPECIAL ASSISTANT ATTORNEY GENERAL

**CERTIFICATE OF SERVICE**


I, Deirdre McCrory, 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 21st day of August, 2008.

  
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