

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CHRISTOPHER THOMAS LEWIS

APPELLANT

VS.

NO. 2008-KA-1119-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of the First Judicial District of Harrison County, Honorable Lisa P. Dodson presiding. On March 13, 2008, a jury convicted Christopher T. Lewis of possession of a controlled substance in violation of Mississippi Code Annotated section 41-29-139(c)(1). (Rev.2005). **T. 121; C.P. 47.** The trial court sentenced Lewis as a habitual offender, under Mississippi Code Annotated section 99-19-81, to four years in the custody of the Mississippi Department of Corrections. **C.P. 50-51.** After denial of a post trial motion, Lewis appealed claiming an insufficiency of evidence. **C.P. 93-95.**

FACTS

On April 20, 2006, Officer Samuel Jewell with the Gulfport Police Department conducted a traffic stop of a car in which the defendant, Christopher T. Lewis, was riding in the front passenger's seat. T. 67. As Officer Jewell approached the car, he saw the driver "passing something over in a hand movement" to the defendant. T. 68.

A few minutes later, Officer Jason Goudin arrived at the scene as backup. T. 79. After being advised of the hand movement, Goudin approached the passenger side and engaged the defendant in a conversation. T. 74; 79. When Officer Jewell noticed what he believed to be crack cocaine in Lewis' left hand he grabbed his hand, directed it over the floorboard and had Lewis drop it to the floorboard. T. 61; 81-82. Lewis explained that when Officer Jewell approached the car, the driver took the rock of cocaine out of his mouth and handed it to Lewis. T. 84.

At trial, the parties stipulated that the substance Lewis dropped on the floorboard was crack cocaine weighing 2.3 grams. The parties further stipulated that Officers Jewell and Goudin saw the cocaine in the defendant's hand. T. 65. The jury convicted Lewis of possession of cocaine.

SUMMARY OF THE ARGUMENT

The evidence in the record was legally sufficient to support the jury's conviction for possession of cocaine. It was undisputed that the defendant took possession of the rock of cocaine from the driver as Officer Jewell approached the car and held it for several minutes, thereby exercising dominion and control over the contraband.

ARGUMENT

I. THERE WAS LEGALLY SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S CONVICTION FOR POSSESSION OF COCAINE.

In his only assignment of error, the defendant contends the evidence in this case does not support a finding of possession of the contraband. He claims that he only had momentary possession of the cocaine and that does not meet the required elements to prove the crime.

When reviewing the sufficiency of the evidence, an appellate court looks to all of the evidence before the jury to determine whether a reasonable, hypothetical juror could find, beyond a reasonable doubt, that the defendant is guilty. An appellate court will not reverse a trial judge's denial of a motion for a new trial unless the verdict is so contrary to the weight of the evidence that, allowing it to stand would sanction an unconscionable injustice. *Groseclose v. State*, 440 So.2d 297, 300 (Miss.1983).

Defendant relies on *Berry v. State*, 652 So.2d 745 (Miss. 1995) to support his argument that his momentary holding of the cocaine was not sufficient to establish possession of the contraband. *Berry* can be distinguished. *Berry* dealt with constructive possession; the case *sub judice* was actual possession. In *Berry*, the driver handed Berry, the passenger, a napkin and directed him to put it in the glove compartment. Berry did not hold the contraband in his hand and there was no evidence establishing that Berry even knew he was placing contraband in the glove compartment. Here, the driver handed Lewis a rock of cocaine, Lewis knew it to be cocaine and held it cupped in his hand for more than three minutes until directed by Officer Goudin to drop it.

The *Berry* court held "The factor of control is essential." Here, unlike in *Berry*, the defendant more than momentarily handled the substance. In *Maples v. State*, 44 Ala. App. 491, 214 So.2d 100 (1968), the driver of a car stopped for a traffic violation handed the defendant, a

passenger, contraband which he placed on a ledge. The Alabama appellate court found possession when Maples, the person receiving the contraband, received it without direction, leaving it within his discretion as to disposition. The court opined that even though Maples' possession was momentary, the circumstances of possession were such that dominion and control could be inferred.

Possession, no matter how fleeting, is sufficient to sustain a conviction. Possession is defined, however, in terms of the exercise of dominion and control. *Berry* at 652 so.2d 751. Lewis' holding of the cocaine was more than a momentary possession and was sufficient to support an inference of dominion and control.

When Lewis concealed the cocaine in his hand, he made a conscious decision to secrete it from the authorities. He did not give it back to the driver, he did not drop it on the floorboard, he did not give it to the officer or bring it to the officer's attention. The cocaine was within the defendant's dominion and control; he had authority to dispose of it as he saw fit and he chose to conceal it from the authorities. The State submits that Lewis was aware of the presence and character of the cocaine and was consciously and intentionally in possession of it as required by *Cunningham v. State*, 583 So.2d 960 (Miss. 1991), *Fox v. State*, 756 So.2d 753 (Miss. 2000) and *Curry v. State*, 249 So.2d 414 (Miss.1971).

Upon a review of the record, a hypothetical juror could find beyond a reasonable doubt that Lewis had possession of the cocaine.

CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal, the State would ask this reviewing court to affirm the jury's conviction of Chris T. Lewis for possession of cocaine and the sentence of the Circuit Court of Harrison County.

Respectfully submitted,

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CERTIFICATE OF SERVICE

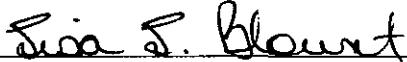
I, Lisa L. Blount, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 5th day of January, 2009.



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