

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NICKY ALONZO PATTERSON

APPELLANT

VS.

NO. 2009-KA-0076-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

The grand jury of Coahoma County indicted defendant in a multi-count indictment with Possession of Cocaine, Felon in Possession of a firearm as an habitual offender and a subsequent drug offender in violation of *Miss. Code Ann.* §§ 99-7-2, 99-19-81, 41-29-139(c)(1)(c), and 41-29-147. (Indictment, c.p. 2-5). After a trial by jury Judge Albert B. Smith, III, presiding the jury found defendant guilty of both charges.

Subsequently, after a separate sentencing hearing where the State offered proof that defendant was an habitual offender. After presentation of evidence and argument of counsel the Court sentenced defendant to 16 years on the cocaine possession

charge and ten years on the felon in possession of a firearm, those sentences to run consecutively. (Sentencing Order, c.p. 12-14).

After denial of post-trial motions this instant appeal was timely noticed.

STATEMENT OF FACTS

Defendant went to an area of Coahoma County known for 'drug activity.' (Tr. 40). Officers observed a female exit a house go to defendant's truck and give him something. Officers immediately surrounded defendant's truck. After defendant exited the truck an officer saw him drop something on the ground. (Tr. 41, 55, 65). An officer on the other side of the truck saw a gun on the passenger floorboard. (Tr. 41). Defendant ran from the scene, was pursued by officers and apprehended. Scientific analysis showed the 'something' dropped by defendant was a bag with 6.2 grams of powdered cocaine.

The jury heard the evidence and found defendant guilty on both counts.

SUMMARY OF THE ARGUMENT

I.

THERE WAS AMPLE, CREDIBLE, LEGALLY SUFFICIENT EVIDENCE TO SHOW POSSESSION OF BOTH THE COCAINE AND THE GUN.

Defendant knowingly possessed the cocaine when he received it in his hand, held it as he exited the vehicle then threw it down on the ground when confronted by Police.

Additionally, any firearm in defendant's vehicle is presumed to be within his dominion and control. The fact the gun belong to someone else is not dispositive, nor does it rebut the presumption of constructive possession.

ARGUMENT

I.

THERE WAS AMPLE, CREDIBLE, LEGALLY SUFFICIENT EVIDENCE TO SHOW POSSESSION OF BOTH THE COCAINE AND THE GUN.

With this singular allegation of error appellate counsel succinctly argues the weight and credibility of the evidence does not support either conviction and seeks reversal with remand for a new trial.

The State's argument will be equally as terse and to the point. There was testimony by law enforcement officers that saw defendant holding something in his hand that he had received from a female. (Tr. 41, 55, 65). He held on to this something as he exited the vehicle. The testimony was that when he was approached by officers he dropped it to the ground and fled on foot.

Expert testimony at trial showed the contents of the bag was an illegal substance. (Tr. 83).

It is the position of the State that the eye-witness testimony of the officer showing that defendant voluntarily took possession of the bag from the female, held it as he exited the vehicle, then dropped it when confronted – is all evidence of possession with knowledge of the contents.

Such evidence and rationale is consistent with a recent appellate decision.

Lewis v. State, 2009 WL 2857044 (¶¶7-12)(Miss.App. 2009)(decided Sept. 8, 2009).

As to the knowledge of being in possession of the firearm, the law is clear -- ¶ The owner of the premises where the weapons were found is rebuttably presumed to be in possession of the weapons. *Evans v. State*, 802 So.2d 137, (¶13) (Miss.App. 2001). It would appear the evidence by two officers was the gun was in plain view from each side of the vehicle. (Tr.41 & 43).

While there was evidence the actual ‘owner’ of the gun was someone other than defendant there was no real evidence (other than the testimony of defendant) that he did not know the gun was in the car. The reviewing Court’s of this State have heard this argument before (gun in car of convicted felon, but the gun belonged to someone else). *Moore v. State*, 986 So.2d 928, 929 (¶ 2) (Miss. 2008)

Ultimately, the jury weighed the facts and the testimony and found defendant guilty of both charges.

¶ 20. “Conflicting testimony does not evince overwhelming evidence; [w]here the verdict turns on the credibility of conflicting testimony and the credibility of the witnesses, it is the jury's duty to resolve the conflict.” *Brown*, 995 So.2d at 702(¶ 13) (citing *Nicholson v. State*, 523 So.2d 68, 71 (Miss.1988)). The jury heard the conflicting statements and resolved the statements in favor of the State.

Westbrook v. State, 2009 WL 3086430 (Miss.App. 2009)(decided Sept. 29, 2009).

Accordingly, the State would ask this Court to deny any requested relief based upon the weight and credibility of the evidence and affirm the jury verdicts.

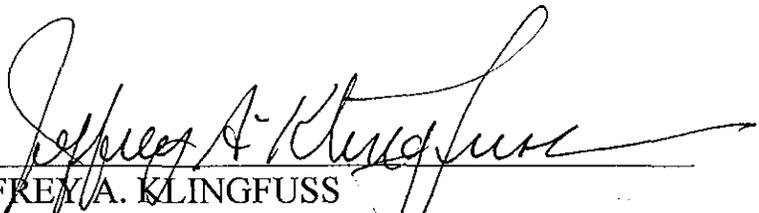
CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal the State would ask this reviewing court to affirm the verdicts of the jury and sentencing by the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jeffrey A. Klingfuss, 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 12th day of October, 2009.



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