

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

**JERMAINE BROWNLEE**

**APPELLANT**

**VS.**

**NO. 2009-KA-0372-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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**STATEMENT OF THE ISSUE**

**I. THE JURY'S VERDICTS ARE NOT AGAINST THE WEIGHT OF THE EVIDENCE.**

**STATEMENT OF FACTS**

On the evening of December 29, 2006, Officers Ben Moore and Danny Vasser with the Olive Branch Police Department Narcotics Division conducted a controlled buy using confidential informant Sarah McLaughlin. T. 131. McLaughlin had been in telephone contact with Jermaine Brownlee throughout the day regarding the purchase of cocaine and hydrocodone. T. 173. At the pre-buy meeting, McLaughlin was searched to ensure that she had no controlled substances on her person. T. 133, 148, 172. Officer Moore drove McLaughlin to the Starbucks parking lot in an unmarked vehicle, and backed into a parking space. T. 135. Brownlee pulled into an adjacent parking spot, so that he and Moore were "eyeball to eyeball." T. 137. McLaughlin exited the unmarked vehicle and got in the back passenger seat of Brownlee's vehicle. T. 137, 174. Brownlee gave McLaughlin one bag containing an eightball of cocaine and one bag containing nine tablets of

hydrocodone. T. 138-139, 175. The transaction was videotaped by Officer Vasser from across the street. T. 133-34. Rather than arresting Brownlee on the scene, the officers subsequently issued a warrant for his arrest to avoid blowing their cover.

Brownlee was ultimately tried and convicted of two counts of sale of a controlled substance. C.P. 158. He was sentenced as a habitual offender to serve thirty years on Count I and twenty years on Count II with both sentences running concurrently. C.P. 159.

### **SUMMARY OF THE ARGUMENT**

The jury's verdicts are not against the weight of the evidence. The confidential informant testified that Brownlee sold her cocaine and hydrocodone in exchange for \$200. Officer Moore testified that he witnessed the hand to hand transaction. The undercover buy was captured on video surveillance. The jury found that the State's witnesses were credible, as evidenced by the verdicts. The verdicts are consistent with the weight of the evidence and represent no unconscionable injustice.

### **ARGUMENT**

#### **I. THE JURY'S VERDICTS ARE NOT AGAINST THE WEIGHT OF THE EVIDENCE.**

When reviewing a claim that a verdict is against the weight of the evidence, a reviewing court will not disturb the verdict unless allowing it to stand would sanction an unconscionable injustice. *Bush v. State*, 895 So.2d 836, 844 (¶18) (Miss. 2005). The determination of witness credibility lies within the sole province of the jury. *Moore v. State*, 969 So.2d 153, 156 (¶11) (Miss. Ct. App. 2007). The jury is also responsible for resolving any conflicts in witness testimony which may arise. *Id.*

Officer Moore, who was parked directly next to Brownlee's vehicle, testified that he saw the

hand to hand transaction between Brownlee and McLaughlin. T. 138, 153. McLaughlin testified about the exchange of \$200 for cocaine and hydrocodone. T. 175. Additionally, the videotape of the transaction was played for the jury. On appeal Brownlee argues that McLaughlin was not thoroughly searched at the pre-buy meeting and also claims that the video of the transaction is of such a quality that Brownlee's identity is not apparent from the video. Regarding the thoroughness of the search, this argument was already made by defense counsel at trial and rejected by the jury. Officer Moore testified that he directed McLaughlin at the pre-buy meeting to turn all of her pockets inside out. T. 148. He admitted that he did not "check her crotch area or private area" for the possession of a controlled substance. T. 150. However, Officer Moore testified that his eyes never left McLaughlin from the time she entered Brownlee's vehicle to the time she returned to the unmarked vehicle with the drugs she purchased from Brownlee. T. 153. He further testified that during his observation of McLaughlin, she never reached into her undergarments. T. 153. The bulk of defense counsel's closing argument centered around the thoroughness of Moore's search of McLaughlin, McLaughlin's credibility as a paid confidential informant, and the fact the buy money was never recovered from Brownlee. Again, Brownlee simply rehashes on appeal arguments that were already rejected by the jury. It is within the sole province of the jury to determine witness credibility, and as evidenced by the verdict, the jury found that the State's witnesses were credible.

Regarding the contention that Brownlee's identity is not apparent from the surveillance video, Officer Vasser testified that he video taped the transaction between McLaughlin and Brownlee. T. 158. Both McLaughlin and Moore positively identified Brownlee in open court as the individual who sold McLaughlin cocaine and hydrocodone on the night in question. T. 136, 171.

There is no conflict in the evidence for the jury to resolve, as the defendant exercised his right to not testify or present any witness or evidence on his own behalf. The verdicts in this case are

consistent with the evidence presented. Brownlee's verdicts do not represent an unconscionable injustice and must, therefore, be affirmed.

### CONCLUSION

For the foregoing reasons, the State asks this honorable Court to affirm Brownlee's convictions and sentences.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, La Donna C. Holland, 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 8th day of February, 2010.



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