

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 96-KA-00300-COA**

**JAMES CRAWFORD**

**APPELLANT**

**v.**

**STATE OF MISSISSIPPI**

**APPELLEE**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED,  
PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	JANUARY 5, 1996
TRIAL JUDGE:	HONORABLE WILLIAM F. COLEMAN
COURT FROM WHICH APPEALED:	HINDS COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	WILLIAM O. TOWNSEND
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: DEWITT T. ALLRED III
DISTRICT ATTORNEY:	EDWARD J. PETERS
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	CT I C/S POSS MJ > 1 KILO W/I: CT II C/S POSS COCAINE: CT I SENTENCED TO SERVE A TERM OF 20 YRS IN THE MDOC & PAY FINE OF \$5,000; CT II SENTENCED TO 3 YRS IN THE MDOC & PAY A FINE OF \$1,000 & SHALL RUN CONSECUTIVE WITH CT I
DISPOSITION:	AFFIRMED - 12/02/97
MOTION FOR REHEARING FILED:	12/16/97
CERTIORARI FILED:	2/25/98
MANDATE ISSUED:	4/23/98

BEFORE THOMAS, P.J., HERRING, HINKEBEIN, AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

Crawford was convicted by a jury in the Circuit Court of Hinds County of Count I, possession of marijuana, and Count II, possession of cocaine. Crawford appeals on the basis of the following issues: (1) the trial court erred in denying to a motion to suppress evidence; (2) the trial court erred in denying a motion to disclose the identity of the confidential informant; and (3) the verdict was against the overwhelming weight of the evidence. We find no error and affirm.

**FACTS**

On August 17, 1993, Officer Phil Burnham arrested Star Parker for possession of cocaine. While Parker was being released on bail, Burnham engaged in a brief conversation with Crawford. Crawford informed Burnham that he came to the jail to post bond for Parker and to give her a ride home. During the conversation, Crawford told Burnham that he owned the truck he drove to the jail. After confirming that the truck was registered to Crawford, Burnham asked for Crawford's consent to search the truck. Burnham obtained Crawford's consent and searched the vehicle; however, the search did not reveal anything out of the ordinary.

On August 27, a confidential informant notified Officer Burnham about the location of drugs in a Jackson residence. After obtaining a search warrant for the residence, Burnham, along with other officers, commenced a surveillance of the area surrounding the house. During this surveillance, Burnham recognized a truck parked at a nearby lounge as the same vehicle driven by Crawford approximately ten days earlier.

While Burnham continued to maintain a surveillance of the area, he observed a great deal of "traffic" at the residence. Burnham also observed Crawford leave the lounge and drive the truck to the residence. Crawford left the truck at the residence and then returned to the lounge in another vehicle. Later, Crawford made a couple of trips between the lounge and the residence in that other vehicle. Shortly thereafter, Burnham and the other officers decided to execute the search warrant on the house. Once the officers discovered marijuana and crystal methamphetamine, they arrested the occupants of the house. As the officers completed the search of the residence, Burnham and other officers went to the lounge to arrest Crawford for conspiracy to possess the drugs found in the house.

After Burnham arrested Crawford at the lounge, he returned to the residence with Crawford. While Burnham and Crawford were standing outside of the residence, a drug dog alerted a patrol officer to the presence of drugs in Crawford's truck. Burnham asked Crawford for the keys to the vehicle, Crawford asserted that he did not own a truck and did not know anything about it. From Crawford's pocket Burnham removed several keys that he had discovered earlier during a "pat down" at the lounge. With the keys, Burnham was able to gain access to the cab of the truck and also to the toolbox located in the bed of the truck. After searching the truck, the officers uncovered cocaine in the glove box and also found marijuana in the toolbox.

Following a trial in the Circuit Court of Hinds County, a jury found Crawford guilty of possession of cocaine and possession of marijuana.

## **DISCUSSION**

### **I. SUFFICIENCY OF THE EVIDENCE**

At trial Crawford sought to suppress introduction of the drugs discovered in the vehicle. During a suppression hearing, the trial court concluded that probable cause existed for Crawford's arrest. The court also found that the officers had probable cause to search the vehicle after the drug dog alerted officers to the presence of drugs in the truck.

On appeal, Crawford does not contest the authority of Officer Burnham to arrest him and to perform a search of the vehicle. Rather, Crawford contends that the State failed to present any evidence to establish his possession of the cocaine and marijuana. Thus, Crawford's assertion that the trial court committed reversible error in failing to suppress the evidence is, in reality, a challenge to the sufficiency of the evidence on the most fundamental element of the offense -- possession.

On appeal from the denial of a motion for a judgment notwithstanding the verdict, this Court reviews the sufficiency of the evidence in the light most favorable to the State. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993). All credible evidence which is consistent with Crawford's guilt must be accepted as true, and the State is given the benefit of all favorable inferences that may be reasonably drawn from the evidence. *Id.* Because matters concerning the weight and credibility of the witnesses are resolved by the fact finder, this Court will reverse only where, "with respect to one or more of the elements of the offense charged, the evidence so considered is such that reasonable and fair-minded jurors could only find the accused not guilty." *Id.*

In order to support a conviction for possession of a controlled substance, the State is not required to prove actual physical possession. *Curry v. State*, 249 So. 2d 414, 416 (Miss. 1971). Rather, the State may establish constructive possession by evidence showing that the contraband was under the dominion and control of the defendant. *Id.* A presumption of constructive possession arises against an owner of premises upon which contraband is found. *Hamburg v. State*, 248 So. 2d 430, 432 (Miss. 1971). However, "when contraband is found on premises which are not owned by a defendant. . . the state must show additional incriminating circumstances to justify a finding of constructive possession." *Cunningham v. State*, 583 So. 2d 960, 962 (Miss. 1991).

The State did not seek an instruction from the trial court to establish a presumption of constructive possession. Since the State did not seek such a presumption, we need not resolve whether a presumption of constructive possession would have arisen in this case. The State submitted a jury instruction, which the court accepted, that described possession. The instruction informed the jury that it was not necessary for the State to prove actual physical possession. Instead, the instruction directed the jury that possession was sufficiently established if the State proved that the substances were subject to Crawford's dominion and control and that he was aware, or reasonably should have been aware, of its presence and character.

Although Crawford denied owning the vehicle parked at the residence, Officer Burnham testified that ten days prior to the arrest Crawford informed him that he owned the truck. At that earlier date, Burnham verified the registration on the truck that Crawford stated he owned. Furthermore, on the day of Crawford's arrest, Burnham observed Crawford drive the truck from the lounge to the residence under surveillance. Crawford was found with the keys to the vehicle and toolbox containing the contraband. Moreover, on the way to the police station, Crawford sarcastically stated: "Would you claim that truck? You wouldn't claim that truck, would you?"

In evaluating all of the evidence, we find that the jury was entitled to conclude that the State presented sufficient evidence to establish that Crawford had dominion and control, and thus constructive possession, over the contraband found in the truck.

## II. DISCLOSURE OF IDENTITY OF CONFIDENTIAL INFORMANT

Crawford next asserts that the trial court erred in denying his motion to disclose the identity of a confidential informant. Crawford contends that he was unable to question the confidential informant to determine if probable cause existed for the arrest. Since the trial court denied the disclosure of the informant's identity, Crawford argues that he was deprived of the right to properly defend himself in court.

The State "need not disclose an informant's identity unless the informant will be a witness at trial or was an eyewitness to the offense, or if failure to disclose would violate a constitutional right of the defendant." *Esparaza v. State*, 595 So. 2d 418, 424 (Miss. 1992). Here, the confidential informant did not serve as a witness in the court proceeding and did not witness the offense charged. The informant merely provided information to Officer Burnham that established probable cause for the issuance of a search warrant of the residence. Crawford was not prosecuted for the drugs discovered inside of the residence. The informant did not provide any information to Burnham relating to the drugs found in Crawford's vehicle. Under *Esparaza*, there was no obligation to disclose the informant's identity.

### **III. WEIGHT OF THE EVIDENCE**

Crawford also asserts that the verdict was against the overwhelming weight of the evidence, and thus the trial court erred when it refused to grant his alternative motion for a new trial. In *Jackson v. State*, 423 So. 2d 129, 131-32 (Miss. 1982), the supreme court provided a list of errors that must be brought to the attention of the trial court in a motion for new trial. The court included in this list a motion contending that the verdict of the jury is against the overwhelming weight of the evidence. *Id.* at 132. Consequently, we find that Crawford's assignment of error is procedurally barred because it was not assigned as a ground for a new trial in the lower court.

As an independent basis, we also find that the evidence supports a jury verdict finding Crawford guilty of possession of cocaine and possession of marijuana.

**THE JUDGMENT AND CONVICTION OF THE HINDS COUNTY CIRCUIT COURT OF COUNT I POSSESSION OF MARIJUANA IN EXCESS OF ONE KILOGRAM WITH INTENT TO DISTRIBUTE AND FINE OF \$5,000 AND COUNT II POSSESSION OF COCAINE AND FINE OF \$1,000 AND SENTENCE TO TWENTY YEARS ON COUNT I AND THREE YEARS ON COUNT II TO RUN CONSECUTIVE WITH COUNT I IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED.**

**ALL COSTS OF THIS APPEAL ARE TAXED TO HINDS COUNTY.**

**BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, AND PAYNE, JJ., CONCUR.**