

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-KA-00790 COA**

VICTOR GRANT A/K/A VICTOR L. GRANT A/K/A **APPELLANT**
VICTOR LEROY GRANT

v.

STATE OF MISSISSIPPI **APPELLEE**

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

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

DATE OF JUDGMENT:	06/24/96
TRIAL JUDGE:	HON. ROBERT LEWIS GIBBS
COURT FROM WHICH APPEALED:	HINDS COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	DAN W. DUGGAN, JR.
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: DEWITT T. ALLRED III
DISTRICT ATTORNEY:	THOMAS MAYFIELD
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	COUNT I POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DISTRIBUTE, COUNT II CONSPIRACY TO DISTRIBUTE A CONTROLLED SUBSTANCE, SENTENCED AS A HABITUAL OFFENDER TO SERVE THIRTY YEARS ON COUNT I AND TWENTY YEARS ON COUNT II, TO RUN CONSECUTIVE TO SENTENCE IN COUNT I
DISPOSITION:	AFFIRMED - 12/2/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	12/23/97

BEFORE BRIDGES, C.J., PAYNE, AND SOUTHWICK, JJ.

PER CURIAM:

This case arises from an appeal from the second trial of Victor Grant in which he was convicted in count I for possession of cocaine with intent to distribute and in count II for conspiracy to distribute cocaine.⁽¹⁾ In this second trial, Grant was convicted of both charges and sentenced as a habitual offender to serve a term of thirty (30) years for possession of cocaine with intent to distribute and a term of twenty (20) years for conspiracy to distribute cocaine. The sentences are to run consecutively and are to be served in the custody of the Mississippi Department of Corrections. On appeal, Grant challenges the sufficiency of the evidence in both charges. Finding the evidence to be sufficient, we affirm.

FACTS

In September of 1992, Detective Alvaline Baggett was engaged in making undercover buys of narcotics for the Jackson Police Department. Detective Baggett testified that she had come to know Grant through her undercover work and had learned that his nickname was "Master." On September 1, 1992, Detective Baggett, having obtained Grant's pager number, paged Grant and keyed in the phone number for him to return her call and the figure 575 representing the dollar amount of cocaine she wished to buy. Shortly thereafter, Grant called the number left by Detective Baggett. Baggett testified that she told the caller that she wanted to speak to the "Master," and the caller said, "This is him." Baggett testified that she recognized the caller's voice as being that of Victor Grant on the basis of her previous conversations with him. Baggett stated that she told Grant that she wanted to buy half an ounce of cocaine for \$575 and asked him to bring it to her at the Meadowbrook Cinema 6. Shortly thereafter, Grant and Timothy Harris arrived in the parking lot. Grant let Harris out and then parked the car and went into the drug store. Baggett indicated that she arrested Harris and then arrested Grant when he came out of the drug store. Baggett testified that Harris was found to be in possession of a cookie (approximately one-half ounce) of crack cocaine and Grant was found to be in possession of a pager. Baggett testified that the pager still displayed the number she had keyed in when she paged Grant as well as the number 575.

ANALYSIS

I. WHETHER THE EVIDENCE WAS SUFFICIENT TO SUPPORT A GUILTY VERDICT FOR BOTH POSSESSION WITH INTENT AND CONSPIRACY TO SELL.

Directed verdict and JNOV motions challenge the legal sufficiency of the evidence. *McClain v. State*, **625 So. 2d 774, 781 (Miss. 1993)**. With regard to the legal sufficiency of the evidence, all credible evidence consistent with the defendant's guilt must be accepted as true and the prosecution must be given the benefit of all favorable inferences that may be reasonably drawn from the evidence. *Id.* This Court is authorized to 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. *Wetz v. State*, **503 So. 2d 803, 808 (Miss. 1987)**.

Grant first argues that the State failed to prove the charge of conspiracy because the State presented no evidence that Grant and Harris expressly entered into an agreement to sell cocaine. This argument fails because the law clearly states that "[a] formal or express agreement is not required to prove a conspiracy; a conspiracy may be proven by the acts and conduct of the alleged conspirators." *Johnson v. State*, 642 So. 2d 924, 928 (Miss. 1994). "[I]t is sufficient when the evidence reveals, from all the facts and circumstances, together with the acts of the parties, a common design or understood purpose between the parties to commit the crime." *Davis v. State*, 485 So. 2d 1055, 1058 (Miss. 1986).

Grant next argues that the evidence was insufficient to support his conviction of possession of cocaine with intent to distribute. Grant bases his argument on the fact that the State could not prove that Grant was either in actual possession or constructive possession of the cocaine. The State correctly argues that its proof that Grant was an accessory to Harris's actual, physical possession of the cocaine was sufficient to warrant the conviction. "It is settled law that substantial knowing participation in the consummation of a sale or in arranging for the illegal sale of unlawful controlled substances may render one guilty of such sale and that one who aids and abets another in such a context is guilty as a principal." *Clemons v. State*, 482 So. 2d 1102, 1104-05 (Miss. 1985); *see also Turner v. State*, 573 So. 2d 1340, 1342 (Miss. 1990) (holding that the prosecution does not have to prove that a defendant had dominion or control over the cocaine in order to prove him guilty as an accessory before the fact and thus guilty as a principal).

Having reviewed the record, we find that there was sufficient evidence to prove Grant guilty of both charges. We therefore affirm the decision of the circuit court.

THE JUDGMENT OF THE HINDS COUNTY CIRCUIT COURT OF CONVICTION IN COUNT I FOR POSSESSION OF COCAINE WITH INTENT TO DISTRIBUTE AND IN COUNT II FOR CONSPIRACY TO DISTRIBUTE COCAINE AND SENTENCES AS A HABITUAL OFFENDER OF THIRTY (30) YEARS IN COUNT I AND TWENTY (20) YEARS IN COUNT II WITH THE SENTENCES TO BE SERVED CONSECUTIVELY IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED AND THE CIRCUIT COURT IS INSTRUCTED TO CORRECT THE SENTENCING ORDER TO REFLECT THE JURY'S VERDICT OF GUILTY IN COUNT II OF CONSPIRACY TO DISTRIBUTE COCAINE. ALL COSTS OF THIS APPEAL ARE TAXED TO HINDS COUNTY.

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

1. This case was originally tried in May of 1993 and this Court on November 28, 1995 reversed Grant's convictions and remanded the case for a new trial on the ground that Grant was denied his right to counsel at the first trial. Please note that in our opinion styled *Victor L. Grant v. State of Mississippi*, No. 93-KA-00650 COA, we mistakenly stated that Grant had been sentenced to serve thirty (30) years in prison for possession of cocaine and twenty (20) years for the sale of cocaine. Our opinion should have stated that Grant was sentenced to thirty (30) years for possession of cocaine with intent to distribute and twenty (20) years for conspiracy to

distribute cocaine. On remand, Grant was properly tried for possession of cocaine with intent to distribute and conspiracy to distribute cocaine.