

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 95-KA-00545 COA**

**TADERRA LAMONT DEJURNETT AND  
SERCOMPE A. HAYNES**

**APPELLANTS**

**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:	05/17/95
TRIAL JUDGE:	HON. R. I. PRICHARD, III
COURT FROM WHICH APPEALED:	PEARL RIVER COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANTS:	WILLIAM L. DUCKER  ATTORNEY FOR TADERRA LAMONT DEJURNETT THOMAS E. SCHWARTZ  ATTORNEY FOR SERCOMPE A. HAYNES
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: DEIRDRE MCCRORY
DISTRICT ATTORNEY:	CLAIBORNE McDONALD, IV  MANYA CREEL
NATURE OF THE CASE:	CRIMINAL -- STRONG ARM ROBBERY
TRIAL COURT DISPOSITION:	ADJUDGED DEJURNETT GUILTY OF ROBBERY AND SENTENCED HIM TO SERVE FIFTEEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS  ADJUDGED HAYNES GUILTY OF ROBBERY AND SENTENCED HIM TO SERVE FIFTEEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS
DISPOSITION:	AFFIRMED - 11/4/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	11/25/97

BEFORE THOMAS, P.J., COLEMAN, AND KING, JJ.

COLEMAN, J., FOR THE COURT:

Pursuant to the verdicts of guilty of robbery which a jury returned in the Circuit Court of Pearl River County, the trial court entered orders of conviction for both Tamera Lamont Dejurnett and Sercome A. Haynes. In the orders of conviction, the trial court sentenced each of them to serve fifteen years in the custody of the Mississippi Department of Corrections. Dejurnett and Haynes have appealed to challenge both the sufficiency and the weight of the evidence on which the jury returned their verdicts of guilty of robbery and to test the sentences of fifteen years which the trial judge imposed. Nevertheless, we affirm.

## I. FACTS

Around 7:30 o'clock in the evening of September 27, 1994, Greg Smith delivered two pizzas to 602 Lewis Circle in Picayune. Each pizza cost \$11.76 for a total purchase of \$23.52. The unidentified customer gave Smith one twenty-dollar bill and one five-dollar bill and thus tipped him \$1.48. Smith put the two bills and a copy of the receipt for the pizzas in his pocket and began to return to the delivery truck. In keeping with the apparent practice of Pizza Hut, Smith kept all of his money in a money bag, which he kept in his delivery truck and which he called "the bank." Thus, Smith had no money on him when he took the pizzas to his customer at 602 Lewis Circle. Smith's girlfriend, Amber Lindseth, whom he later married on February 4, 1995, accompanied him that night in the truck while he delivered pizzas.

As Smith walked toward the delivery truck, Haynes, whom Smith had noticed was standing outside the house next door to where he had delivered the two pizzas, asked Smith if he sold pizzas directly out of his truck. Smith told him that he did not but instead suggested that if Haynes and his group would call Pizza Hut, he would deliver a pizza to them. Haynes then asked Smith what time the Pizza Hut closed, to which Smith responded that it closed at 10:00 p.m. At that moment, Dejurnett struck Smith in the head with his fist and knocked him to the ground. While Smith lay helpless on the ground, Dejurnett, Haynes, and a juvenile punched and kicked him and grabbed at his clothing.

Amber Lindseth remained in the truck during the entire incident, but after she screamed at Smith's attackers, they all ran away. Smith stayed on the ground for a few seconds and then struggled to his feet. Dazed and disoriented, Smith staggered toward the truck and drove back to Pizza Hut. Once Smith and Lindseth were safely back at the Pizza Hut, Smith explained to the manager that he had been attacked. The manager called the police department, to which call Robert Scarborough, a patrolman with the Picayune Police Department, responded. When Officer Scarborough arrived at the Pizza Hut, he suggested that Smith and the manager total Smith's tickets for the pizzas which he had delivered that night to determine if any money was missing.

Officer Scarborough then drove to the scene of the attack and searched the area with his flashlight, but he found nothing. In the meantime, Smith and the manager of Pizza Hut tallied his evening's receipts and discovered that the twenty-dollar bill and the five-dollar bill with which the customers at 602 Lewis Circle had paid him for the two pizzas were missing from Smith's pockets.

## II. TRIAL

Pursuant to the grand jury's indictment of Dejurnett and Haynes for the robbery of Smith, they were tried jointly on May 3, 1995. The State's witnesses included Smith, Lindseth, Officer Scarborough, and Leola Bagley, a neighbor who lived at 604 Lewis Circle and had witnessed the attack on Smith. Smith described the attack on him as follows: "[T]hey was [sic] grabbing just all over. I couldn't really tell, but they was [sic] grabbing all over my pants and just everywhere. They was [sic] hitting me everywhere." Bagley, who had watched the incident from her front porch, positively identified Dejurnett and Haynes as Smith's attackers.

Neither Smith nor any other witness for the State saw either of the defendants take anything from Smith, and Smith did not realize that he no longer had the two bills until after he and Amber Lindseth had returned to the Pizza Hut. Under cross-examination, Smith was asked, "Do you know who took the money?" He answered, "Not really. No."

Counsel for both defendants moved to quash the indictment and dismiss the charges against their clients after the state had rested on the ground that the State had failed to prove a prima facie case of robbery. The court overruled their motions as follows:

Taking this entire situation in its common sense, logical scenario, the court finds that there is no other explanation for the conduct on the part of the defendants, if the witnesses for the State are believed, other than the fact that their motive was to rob the victim, Greg Smith. And there is no other explainable reason for the absence of the money that was for certain in his pocket at one point and for certain not there at another point and verified by witnesses that it was not on the sidewalk, it was not in the truck. There is no other logical conclusion as to what could've occurred to cause the money to disappear except that the defendants, or one of the three who assaulted the victim, removed the same from his pocket.

Dejurnett testified in his own defense. He admitted that he had assaulted Smith, which he attempted to justify because Smith was arguing with Haynes, who was his cousin. Thus, he struck Smith in his cousin's defense. Haynes did not testify. We have noted the consequences of the trial.

### **III. REVIEW, ANALYSIS, AND RESOLUTION OF THE ISSUES**

Dejurnett and Haynes filed separate briefs in this case, but each appellant presents in his brief the same three issues for this Court to review and to resolve. We quote these issues verbatim from Haynes' brief.

1. The [trial] court erred in overruling a motion for directed verdict following the close of the State's case.
2. The verdict was against the overwhelming weight of the evidence.
3. The [trial] court erred in [harshly] sentencing the defendant[s] to fifteen (15) years.

**Issue 1.** The [trial] court erred in overruling a motion for directed verdict following the close of the State's case.

Directed verdict motions challenge the legal sufficiency of the evidence. *McClain v. State*, 625 So. 2d 774, 778 (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). It is with this standard of review in mind that we analyze and resolve this first issue.

Both Dejurnett and Haynes argue that the trial court should have granted their motions for directed verdicts at the close of the State's case because the State failed to prove one of the essential elements of robbery, the taking of property of another. Section 97-3-73 of the Mississippi Code defines the felony of robbery, commonly called "strong arm robbery," as follows:

Every person who shall feloniously take the personal property of another, in his presence or from his person and against his will, by violence to his person or by putting such person in fear of some immediate injury to his person, shall be guilty of robbery.

Miss. Code Ann. § 97-3-73 (Rev. 1994). When Dejurnett testified in his own behalf, he admitted that he hit and kicked Smith, but he steadfastly denied that he stole anything from him. Thus, he admitted his guilt of simple assault but denied his guilt of robbery. While Haynes did not testify, he concedes in his argument on this issue that the State's evidence was sufficient to establish his guilt of the misdemeanor of simple assault. However, they insist that there was no evidence of their "taking" any of the property of Smith, an element needed for a robbery conviction.

Dejurnett and Haynes declare that the State presented no direct evidence to show that either of them took the two bills out of Smith's pockets during the foray. They do not challenge the veracity of the evidence that Smith had the two bills in his pocket when he left 602 Lewis Circle; neither do they deny that the two bills were lost during their attack on Smith. Thus, the evidence of their taking the bills was circumstantial. The Mississippi Supreme Court has explained, "Circumstantial evidence is entitled to the same weight and effect as direct evidence, and this Court has upheld convictions based solely on circumstantial evidence." *Sherrell v. State*, 622 So. 2d 1233, 1238 (Miss. 1993).

In a criminal case the State's burden is always to prove a defendant guilty of the crime of which he stands accused beyond a reasonable doubt. In the case *sub judice*, the testimony of Smith, Lindseth, Bagley, and Dejurnett established the element of "violence to [Smith's] person," which Section 97-3-73 requires. On the other hand, the evidence of the "taking" of the two bills in Smith's possession was circumstantial. We reiterate the standard of review which this Court must apply in resolving this issue as established in *Rhodes v. State*, 676 So. 2d 275, 281 (Miss. 1996):

[W]hen reviewing a jury verdict of guilty we are required to accept as true all the evidence favorable to the State, together with reasonable inferences arising therefrom, to disregard the evidence favorable to the defendant, and if such will support a verdict of guilty beyond a reasonable doubt and to the exclusion of every reasonable hypothesis consistent with innocence, then the jury verdict shall not be disturbed.

The State's evidence established that after Smith had delivered the two pizzas and put the two bills into his pocket, Dejurnett and Haynes were among those persons who attacked Smith as he returned to his delivery truck. Smith testified that while he was being attacked, Dejurnett and Haynes were

grabbing at his pants and pulling at his clothes; thus, they had ample opportunity to take the money from his pockets during their attack on him. After Smith had tallied his receipts and cash in his "bank" upon his return to the Pizza Hut, he discovered that the twenty-dollar and the five-dollar bills were missing. Officer Scarborough searched the scene of the attack on Smith with the aid of his flashlight, but he found no bills.

The Mississippi Supreme Court has opined that "the jury is the judge of the weight and credibility of testimony and is free to accept or reject all or some of each witness's testimony." *Arteigapiloto v. State*, 496 So.2d 681, 686 (Miss. 1986). The jury may draw any reasonable inferences from the evidence in a case, and "[c]ircumstantial evidence need not exclude every possible doubt but only every reasonable doubt, or reasonable hypothesis of innocence." *Tolbert v. State*, 407 So. 2d 815, 820 (Miss. 1981). The sufficiency of circumstantial evidence is peculiarly for the jury to determine, and their decision should not be disturbed unless it is opposed by a decided preponderance of the verdict. *Id.*

We concur with the trial judge's opinion that a logical conclusion to be reached from the State's evidence was that one of Smith's three attackers removed the bills from his pocket, which Smith had described as "deep" when he testified for the State, during their attack on Smith. Moreover, a reasonable inference from the evidence of the conversation between Smith and Haynes before the attack was that Smith's robbery motivated the attack. The jury's verdict of both appellants' guilt of robbery embodies their acceptance of these inferences from the evidence; thus, we affirm the trial judge's denial of the appellants' motions to quash the indictment and dismiss the charge, the equivalent of a motion for a directed verdict, which they made when the State rested.

**Issue 2.** The verdict was against the overwhelming weight of the evidence.

Motions for a new trial challenge the weight of the evidence and "[implicate] the trial court's sound discretion." *McClain*, 625 So. 2d at 781. New trial decisions rest within the discretion of the trial court. *Id.* A new trial motion should only be granted when the verdict is so contrary to the overwhelming weight of the evidence that, to allow it to stand, would be to sanction an unconscionable injustice. *Wetz*, 503 So. 2d at 812. This court, on appeal, will reverse and order a new trial only upon a determination that the trial court abused its discretion, accepting as true all evidence favorable to the State. *McClain*, 625 So. 2d at 781.

Haynes argues that "[i]t is clear that [he] was convicted because of his presence and participation in the physical altercation," and that "the law requires more before a conviction for the crime of robbery [can] be allowed to stand." He then repeats his complaint about the failure of the evidence to establish that the bills were actually taken from Smith. Dejurnett argues, "Whether the jury accepted [his] testimony or not, the state's witnesses contradicted each other from the number of people involved, to whether or not there was proper lighting in the parking lot, to whether or not Greg Smith lost anything in the melee." Dejurnett further stresses that a third person, a juvenile, was charged with participation in the robbery and that perhaps the juvenile took the money during the attack on Smith. As did Haynes, Dejurnett reiterates his analysis of the evidence from which he concludes that it was simply insufficient to establish that anything was taken from Smith.

In *Gandy v. State*, 373 So. 2d 1042, 1045 (Miss. 1979), the Mississippi Supreme Court explained the duty of the jury to resolve such conflicts in the evidence. The Court opined:

As is usual in jury cases, the evidence conflicted, but the conflict does not necessarily create a "reasonable doubt" of appellant's guilt. Jurors are permitted, indeed have the duty, to resolve the conflicts in the testimony they hear. They may believe or disbelieve, accept or reject, the utterances of any witness. No formula dictates the manner in which jurors resolve conflicting testimony into findings of fact sufficient to support their verdict. That resolution results from the jurors hearing and observing the witnesses as they testify, augmented by the composite reasoning of twelve individuals sworn to return a true verdict. A reviewing court cannot and need not determine with exactitude which witness or what testimony the jury believed or disbelieved in arriving at its verdict. It is enough that the conflicting evidence presented a factual dispute for jury resolution.

The only possible distinction between Haynes and Dejurnett's position on their mutual second issue would be the evidence which Dejurnett adduced when he testified. Dejurnett's testimony consisted primarily of both his admission that he had assaulted Smith along with others because he perceived that Smith was arguing with his cousin, Haynes, and his denial that he had taken anything at all from Smith. Nevertheless, while the standards of review are different for the first and second issues, the appellants' arguments on both issues are essentially the same. This Court finds nothing in the record to demonstrate that the trial judge erred or abused his discretion when he denied Dejurnett and Haynes' motions for new trials. Therefore, we resolve this issue adversely to the appellants and affirm the the trial court's denial of their motions for new trial.

**Issue 3.** The [trial] court erred in [harshly] sentencing the defendant[s] to fifteen (15) years.

Section 97-3-75 of the Mississippi Code prescribes the penalty for conviction of robbery:

Every person convicted of robbery shall be punished by imprisonment in the penitentiary for a term not more than fifteen years.

Miss. Code Ann. § 97-3-75 (Rev. 1994). The trial judge imposed upon both Dejurnett and Haynes the maximum sentence of fifteen years to serve in the custody of the Mississippi Department of Corrections. Haynes complains that "in cases where defendants have been charged with robbery and plead guilty of robbery on a voluntary basis, sentences rarely, if ever, exceed ten years." Dejurnett remonstrates that the trial judge exceeded his greatest expectations by stating, "While [he] expected a prison sentence, he was not prepared for the maximum." The State responds that when the trial judge requested allocution from Dejurnett and Haynes before he imposed sentence, both they and their respective attorneys remained silent and that after the trial judge had sentenced each of them, neither objected to the sentence. Thus, the State argues, the appellants waived their right to object to it on appeal. *See Reed v. State*, 536 So. 2d 1336, 1339 (Miss. 1988) (holding that because the appellant did not present to the trial court the proposition that his sentence was unconstitutional, he may not assert that proposition for the first time on appeal).

The Mississippi Supreme Court has explained, "[I]t is well settled that the imposition of a sentence is within the discretion of the trial court and this Court will not review the sentence, if it is within the limits prescribed by statute." *Reed*, 536 So. 2d at 1339. However, Dejurnett and Haynes assert that *Wallace v. State*, 607 So. 2d 1184 (Miss. 1992), supports their position on this issue. In *Wallace*, the Mississippi Supreme Court adopted the United States Supreme Court's three-pronged test for

evaluating the proportionality of a sentence which it established in *Solem v. Helm*, 463 U.S. 277, 103 S.Ct. 3001 (1983). The elements of the test include:

- (1) the gravity of the offense and the harshness of the penalty;
- (2) comparison of the sentence with sentences imposed on other criminals in the same jurisdiction; and
- (3) comparison of sentences imposed in other jurisdictions for commission of the same crime with the sentence imposed in this case.

*Wallace*, 607 So. 2d at 1188.

Both appellants argue that their sentences are greater than those imposed in neighboring counties for the same offense, but the record contains nothing to support this factual allegation. Haynes argues that the severity of his sentence will "unduly pressure[]" defendants to plead guilty, rather than stand trial, the effect of which is "chilling" on other defendants' exercise of their constitutional right to trial. Again, there is nothing in the record to support this argument. See *Burney v. State*, 515 So. 2d 1154, 1160 (Miss. 1987) (quoting *Mason v. State*, 440 So. 2d 318, 319 (Miss. 1983)) (holding that the supreme court "must decide each case by the facts shown in the record, not assertions in the brief).

Regardless of these considerations, the Mississippi Supreme Court provided a direct answer to the appellants' argument to support their position on their third issue in *Barnwell v. State*, 567 So. 2d 215, 221-22 (Miss. 1990):

There are general principles which can be drawn from the Supreme Court's rulings in *Rummel* and *Solem* which have been adopted by a number of jurisdictions and which we now adopt. In cases factually similar to *Rummel*, *Rummel* provides the rule. Apart from the factual context of *Solem* -- a sentence of life in prison without the possibility of parole -- or a sentence which is manifestly disproportionate to the crime committed (e.g. life sentence for overtime parking, see, *Rummel*, 445 U.S. at 274 n. 11, 100 S.Ct. at 1139 n. 11) extended proportionality analysis is not required by the Eighth Amendment.

These principles are consistent with the Supreme Court's overriding theme expressed in both *Solem* and *Rummel*, of giving substantial deference to the legislature in determining the limits of punishment for crimes, as well as recognizing the discretion of trial courts in sentencing criminals. Further, they are consistent with our own prior case law on this subject. Though no sentence is "per se" constitutional, this Court, in the context of our habitual statutes, as well as in sentencing other offenders, has recognized the broad authority of the legislature and trial court in this area and has repeatedly held that where a sentence is within prescribed statutory limits, it will generally be upheld and not regarded as cruel and unusual. (citations omitted).

Our consideration of the foregoing quotation from *Barnwell* results in our agreement with the State's declaration that "*Solem* is plainly inapplicable to an unenhanced sentence within the statutory limits." Dejernett and Haynes' sentences, although the maximum prescribed by Section 97-3-75, were within

that statutory limit, and we accordingly affirm the trial court's sentences of Dejurnett and Haynes to serve fifteen years in the custody of the Mississippi Department of Corrections.

#### **V. SUMMARY**

The evidence necessary to prove all the elements of the crime of robbery of which the jury found Dejurnett and Haynes guilty, although circumstantial as to their taking the twenty-dollar and the five-dollar bills, was sufficient to establish the State's prima facie case of robbery. Thus, the trial judge correctly denied the defendants' motions to quash the indictment and dismiss the charge against them. Neither were the jury's verdicts of "guilty of robbery" against the overwhelming weight of the evidence. It was the jury's prerogative and duty to adjudge the credibility of the witnesses as well as the weight and worth of their testimony, even if they found it to be conflicting as the appellants argue that it was. The fifteen-year sentences which the trial court imposed on both Dejurnett and Haynes are within the limits set by Section 97-3-75 of the Mississippi Code as punishment for the crime of robbery and thus did not violate the "Cruel and Unusual Punishment" clause of the Eighth Amendment. The trial court's orders of conviction and sentences of Dejurnett and Haynes are affirmed.

**THE PEARL RIVER COUNTY CIRCUIT COURT'S ORDERS OF CONVICTION OF THE APPELLANTS' GUILT OF ROBBERY AND ITS SENTENCES OF EACH APPELLANT TO SERVE A TERM OF FIFTEEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS ARE AFFIRMED. COSTS OF THIS APPEAL ARE TAXED TO PEARL RIVER COUNTY.**

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