IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CHARLDRICK BETTS — APPELLANT

VS. — NO. 2007-KA-1283

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

Procedural History

A grand jury empaneled in the Circuit Court of Lee County returned an indictment charging Chaldrick Betts with one count of possession of a cocaine (Count I) and one count of possession of marijuana (Count II). (C.P.3) By separate indictment, he was charged with felony eluding of a police officer. On the motion of the defense, the cases were consolidated for trial. (C.P.31-32) Betts was found guilty on Count I and on the charge of felony eluding of a police officer; the jury was unable to agree as to Count II. Thereafter, Betts was sentenced to terms of imprisonment of eight years and five years with three years suspended, respectively. (C.P.63, 151) Aggrieved by the judgment rendered against him, Betts has perfected an appeal to this Court.

Substantive Facts

On September 21, 2005, Officers Chris Barnett and Nyle Calley[1] were operating a driver's license checkpoint on Highway 370 in Baldwin. (T.52-53) When Mr. Barnett was asked to describe this checkpoint and the procedures followed, he testified as follows:

> [M]y vehicle was facing back east on 370. ... I was parked right in the middle of the turning lane and Officer Calley was faced back west. And that way if the vehicle turned back on the hill going back west, he'd go that way and I could go east if one come [sic] and turned back that way. So during this appropriate [sic] time several vehicles had came [sic] through and we didn't have a problem at all, but all of a sudden this one was coming at a pretty high rate of speed at the time and once we ... started flashing our lights for them to slow down they began to come just like they was [sic] going to stop, but all of a sudden he just took out at a high rate of speed. And I had my flashlight, hollering, yelling at him, stop, stop. My light flashed into the car and I recognized the driver of the vehicle.
>
> (T.53-54)

Mr. Barnett went on to testify that driver, Chaldrick Betts, "slowed down, but at no time did he stop." (T.56) When asked what happened after Betts "took off," Mr. Barnett gave testimony set out below in pertinent part:

> That's when I alerted Nyle, Officer Calley, that he was running and by that time I ran to my vehicle and jumped in and by that time I was heading towards behind him and he was approaching the top of the hill at 370 and my speed ... had to be a least above 50 miles an hour at the time to catch up with him. And Officer Calley was approaching us from the rear. And all of a sudden I just saw stuff flying out of the passenger's side of the window.
>
> * * * * * *
>
> And Officer Calley made his way around both of us and about overtake [sic] him in the centerline. As he got in front of

[1]At the time of trial, Mr. Barnett and Mr. Calley were not employed as police officers.

> him what he was doing was calling a rolling roadblock to try to keep him from getting on to the next highway where traffic was coming through there.
>
> And at this time Mr. Betts' vehicle went off the road to the right to try go [sic] around him and Officer Calley went over and cut him off ...
>
> So what this vehicle did he crossed back over and went through the yield sign and heading back towards the north traffic. And Officer Calley whipped around on the Fourth Street heading north and got in front of him and made him go up Lee Street. And Lee Street runs into a dead end.
>
> (T.56-57)[2]

All the while, Betts was surpassing the speed limit. Mr. Barnett was approximately 55 miles per hour in a 35-mile-per-hour zone in order to remain in pursuit. (T.58-59) Once the car came to a stop, Betts got out and "started running back towards 370." As Mr. Barnett was chasing the suspect across an open field, Betts "stumbled in this big ole [sic] hole" and fell down with his hands spread out. As Mr. Barnett was handcuffing him, he "looked beside him" and saw "a plastic bag containing some white substance in it, rock-like substance." (T.62-63)

Back at the original checkpoint location on Highway 370, Mr. Barnett met the Guntown officer. They found a "brown bag" at the spot at which Mr. Barnett had seen an object flying out of the window of Betts' vehicle. (T.64-65)

After exiting his car, Betts ultimately ran at least 20 to 25 yards before Mr. Barnett managed to apprehend him. (T.66)

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[2]Immediately after he observed objects being tossed out of the window of Betts' vehicle, Mr. Barnett "notified Guntown PD, which is the next town below Baldwin, to have an officer to respond up there to that location ... " (T.61)

Mr. Calley testified that as the defendant's car approached the checkpoint, it slowed down but then "took off" at a high rate of speed. Because Mr. Barnett's car "was facing the way they was [sic] going, he caught up with them first." Driving at a speed of more than 70 miles per hour, Mr. Calley ultimately "caught up with them" before they reached Highway 145 and "passed both vehicles." At one point, Betts "tried to pass" Mr. Calley "on the right hand side of the road"; Mr. Calley "went over in the gravel n the shoulder" but "forced him back" to the left, all at a high rate of speed. Finally, Betts "got on 145 for just a short distance" before Mr. Calley "forced him down a dead-end street." (T.79-81)

Mr. Calley described the culmination of this incident as follows, verbatim:

> I slid trying to stop. They was turning into Lee Street. My partner was still on their bumper. And I had to back up, get in line with Lee Street and go down it, by that time him and Officer Barnett done run into the grass probably 25 or 30 yards. I went to the passenger's side of the car, checked him, searched him, sat him back in the car and I went to where my partner was at. He shined a flashlight on the ground and showed me what was laying there. I know there were two rocks of what looked like crack cocaine.
>
> I turned around and went back to the vehicle, got Mr. Richey out, patted him down again, put him in my patrol car, we went back to Highway 370 where Officer Barnett said they was throwing stuff from the vehicle. Guntown come up there and we had called for his assistance. When we seen them throw it out that was– and while we was walking the road where we seen them throw it out at, we found a small paper sack that had a small amount of marijuana in it. And that's all we found on the highway.
>
> (T.82)

The state's expert witness testified that the rock-like substance in question had been "determined to be cocaine in the amount of 0.38 gram." (T.93)

The defense called Betts' passenger, his brother Artravis Richey, who testified that he and Betts did not know the officers were conducting a roadblock because "[n]o lights were not [sic] on." Richey admitted that he had possessed "[c]ocaine and marijuana" which he threw out of the car window. He testified that Betts did not instruct him to do this. He went on to testify that "[t]he fuel injecting was messed up on the car and ... it was flooding out," incapable of speeding. (T.97-100)

In rebuttal, Mr. Calley testified that at the time the defendant drove through the checkpoint, he and Mr. Barnett "had blue lights on front and back on both patrol cars." (T.116)

SUMMARY OF THE ARGUMENT

Betts has not shown error in the trial court's granting the state's motion in limine. Having failed to made an adequate proffer of the excluded testimony, he has not preserved this issue for review.

The verdict is based on legally sufficient proof and is not contrary to the overwhelming weight of the evidence.

PROPOSITION ONE:

BETTS HAS NOT SHOWN ERROR IN THE TRIAL COURT'S GRANTING THE STATE'S MOTION IN LIMINE

Betts' first issue arose immediately prior to the selection of the jury, when the following was taken:

> MR. DANIELS: Your Honor, if the defense would be so kind, the State would like to ask the Court to enteratin a motion in limine ore tenus in that I understand that both officers in this case, Officer Calley and Officer Burnett, are no longer with the Baldwin Police Department. I do not know if they left voluntarily each of them or were terminated, either of them. But whether or not they were fired, quit, or otherwise left, is of

no relative value to this case. And in the event that any accusation is made that they were terminated and any reasons therefore would be highly prejudicial to the State's case with very and little, if any, probative value.

So, therefore, the State moves in limine to prohibit the defense or any of its witnesses from going into this irrelevant matter.

THE COURT: Ms. Jones?

MS. JONES: Your Honor, if the State intends to put on police reports and signed affidavits by these officers that are no longer with the police department, I would certainly like to test the veracity of their honesty. And **if** they were terminated for dishonesty or not doing their job properly I think that certainly goes to the weight of their testimony and how much weight it would be given. So I think it's possibly relevant why they were– why they are no longer with the police department.

THE COURT: Do you have any knowledge that their no longer being with the police department had anything to do with this case, Ms. Jones?

MS. JONES: The facts of this particular case?

THE COURT: Yes.

MS. JONES: No, Your Honor. But I have been made aware that they are– **allegedly** they were both terminated and that **allegedly** they were both hanging around people that were dealing drugs in the Baldwin area, that sometimes they did, sometimes they did not prosecute these people or arrest these people. So I think it can certainly go to their propensity to tell the truth.

THE COURT: Well, I fail to see why they were dismissed has any relevancy as to whether your client did or did not possess marijuana and cocaine and fled the law on this particular day. And I agree with the State, unless you can give me more I don't see that it's relevant and we're not going to go there.

And the State's motion in limine along those lines– I will allow you to ask a simple question are you employed there now, but we are not going to go into any reasons for dismissal

at this time without a whole lot more knowing that it had something to do with this particular case. And your motion in limine will be granted.

Anything else before we start picking the jury?

MS. JONES: No. I would like at the appropriate time to make a proffer of the evidence that I would like to bring out.

THE COURT: Go ahead and proffer it now because I'd like to hear it if you know more information along those lines.

MS. JONES: All I simply wanted to state was that his propensity to tell the truth, that being the two officers, if he was lying and not doing his job, not following the law as police officers, we should definitely not put any weight whatsoever in the signed statements, the affidavit that the State is bringing to court today to prove that the defendant did anything, or did not do something on a certain day. That's my whole reason.

I don't really care why he got hired. I don't think he got fired for doing– you know, filling out an affidavit in this case. But I think it shows that he's not a truthful person and the jury should not put any weight whatsoever on this testimony.

THE COURT: Okay. Anything else for your proffer?

MS. JONES: That's all.

(emphasis added) (T.29-32)

Betts now contends the trial court's ruling violated his right to confront the witnesses against him and constitutes reversible error. The state acknowledges that one accused of a crime has a broad right to cross-examine the witnesses against him; however, the scope of that cross-examination is within the sound discretion of the trial judge, who has the inherent power to limit the cross-examination to relevant matters. *Smith v. State*, 733 So.2d 793, 801 (Miss.1999). The court's limiting of cross-examination is reviewed under an abuse of discretion standard. *Jefferson v. State*, 818 So.2d 1099, 1109 (¶ 24) (Miss.2002).

The state submits it is impossible to analyze this issue because the defendant's attempted proffer never left the realm of speculation as to what the officers' testimony would have been. There was no positive showing that they had been terminated from their employment with the Baldwin Police Department, or that the fact of their leaving that employment– for whatever reason– had any relevance to their credibility.

A similar argument was made and rejected as follows in *Murray v. State*, 849 So.2d 1281, 1289 (Miss.2003).

> Murray argues that the trial court erred in refusing to allow him to develop testimony concerning Dumas's prior conviction and pending charge of cocaine possession. He argues that the trial court's determination that such questioning would be improper impeachment violates his Fourteenth Amendment due process rights to fully cross-examine witnesses against him. He further argues that the Mississippi Rules of Evidence allow wide-open cross-examination and impeachment of witnesses through evidence of prior conviction.
>
> This Court has repeatedly held that "when testimony is excluded at trial, a record must be made of the proffered testimony in order to preserve the point for appeal." [citations omitted] In *Settles v. State*, 584 So.2d 1260, 1265 (Miss.1991), this Court stated "if a proffer is required in the face of an erroneous ruling, surely no less is required to preserve the issue where no ruling is made." Because Murray made no proffer for the record to preserve the issue for appeal, we need not address this issue.

Considering an analogous issue, the Court of Appeals recently observed that the defense had failed to make a record of the excluded testimony in issue: "Nothing in the record indicates what Jeff or Helen Stewart's testimony would have been." *Stewart v. State*, 928 So.2d 945 (Miss.App.2006). The Court went on to hold,

> The need for a proffer is not merely academic. Assuming one or both of the witnesses would have agreed to testify, either they or Johnson would have been committing perjury.This

> Court cannot assume something outside of the record. ... [citations omitted] Therefore, there is no basis on which to find that the circuit court had an opportunity to determine whether Jeff or Helen Stewart would have been prepared to swear under oath that Johnson signed the document. As such, we find that the issue was not preserved for appellate review." *Id.*, at 949-50.
>
> *Stewart v. State*, 928 So.2d 945, 949-50 (Miss.App.2006).

Accord, *Kittler v. State*, 830 So.2d 1258, 1260 (Miss.App.2002).

From the foregoing excerpt, it is clear that the court gave the defense an opportunity to make a record of the proffered testimony, it failed to do so. The attempted proffer was essentially a request to go on a fishing expedition, absent an establishment of fact. As such, it was purely speculative. Accordingly, no basis exists for holding the trial court in error on this point. Betts' first proposition should be denied.

PROPOSITION TWO:

THE VERDICTS ARE BASED ON LEGALLY SUFFICIENT PROOF AND ARE NOT CONTRARY TO THE OVERWHELMING WEIGHT OF THE EVIDENCE

Betts finally challenges the sufficiency and weight of the evidence undergirding his convictions. To prevail on the assertion that he is entitled to a judgment of acquittal, he must satisfy the following formidable standard of review:

> When on appeal one convicted of a criminal offense challenges the legal sufficiency of the evidence, our authority to interfere with the jury's verdict is quite limited. We proceed by considering all of the evidence--not just that supporting the case for the prosecution--in the light most consistent with the verdict. We give [the] prosecution the benefit of all favorable inferences that may reasonably be drawn from the evidence. If the facts and inferences so considered point in favor of the accused with sufficient force that reasonable men could not have found beyond a reasonable doubt that he was guilty, reversal and discharge are required. On the other hand, if there is in the record substantial evidence of such quality and

> weight that, having in mind the beyond a reasonable doubt burden of proof standard, reasonable and fair-minded jurors in the exercise of impartial judgment might have reached different conclusions, the verdict of guilty is thus placed beyond our authority to disturb.
>
> *Manning v. State*, 735 So.2d 323, 333 (Miss.1999), quoting *McFee v. State*, 511 So.2d 130, 133-34 (Miss.1987).

Furthermore,

> The jury is charged with the responsibility of weighing and considering conflicting evidence, evaluating the credibility of witnesses, and determining whose testimony should be believed. [citation omitted] The jury has the duty to determine the impeachment value of inconsistencies or contradictions as well as testimonial defects of perception, memory, and sincerity. *Noe v. State*, 616 So.2d 298, 302 (Miss.1993) (citations omitted). **"It is not for this Court to pass upon the credibility of witnesses and where evidence justifies the verdict it must be accepted as having been found worthy of belief."** *Williams v. State*, 427 So.2d 100, 104 (Miss.1983).
>
> (emphasis added) *Ford v. State*, 737 So.2d 424, 425 (Miss.App.1999).

See also *Jackson v. State*, 580 So.2d 1217, 1219 (Miss.1991) (on appellate review the state "is entitled to the benefit of all favorable inferences that may reasonably be drawn from the evidence"), and *Noe*, 616 So.2d at 302 (evidence favorable to the defendant should be disregarded). Accord, *Harris v. State*, 532 So.2d 602, 603 (Miss.1988) (appellate court "should not and cannot usurp the power of the fact-finder/ jury"). "When a defendant challenges the sufficiency of the evidence to support a conviction, the evidence which supports the verdict is accepted as true by the reviewing court, and the State is given the benefit of all reasonable inferences flowing from the evidence." *Dumas v. State*, 806 So.2d 1009, 1011 (Miss.2000).

This rigorous standard applies to the claim that Brown is entitled to a new trial:

> The standard of review in determining whether a jury verdict is against the overwhelming weight of the evidence is well settled. "[T]his Court must accept as true the evidence which supports the verdict and will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial." *Dudley v. State*, 719 So.2d 180, 182(¶ 8) (Miss.1998). On review, the State is given "the benefit of all favorable inferences that may reasonably be drawn from the evidence." *Griffin v. State*, 607 So.2d 1197, 1201 (Miss.1992). "Only in those cases where the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice will this Court disturb it on appeal." *Dudley*, 719 So.2d at 182 . "This Court does not have the task of re-weighing the facts in each case to, in effect, go behind the jury to detect whether the testimony and evidence they chose to believe was or was not the most credible." *Langston v. State*, 791 So.2d 273, 280 (¶ 14) (Miss.Ct.App.2001).
>
> *Smith v. State*, 868 So.2d 1048, 1050-51 (Miss.App.2004),

It has been "held in numerous cases that the jury is the sole judge of the credibility of the witnesses and the weight to be attached to their testimony." *Kohlberg v. State*, 704 So.2d 1307, 1311 (Miss.1997). As this Court recently reiterated in *Hales v. State*, 933 So.2d 962, 968 (Miss.2006), criminal cases will not be reversed "where there is a straight issue of fact, or a conflict in the facts..." [citations omitted] Rather, "juries are impaneled for the very purpose of passing upon such questions of disputed fact, and [the Court does] not intend to invade the province and prerogative of the jury. " [citations omitted] Finally, in this case "[t]here was not a great deal of evidence for the fact finder to weigh since the defendant did not testify." *White v.. State*, 722 So.2d 1242, 1247 (Miss.1998). The defendant's failure to do so left the jury free to give "full effect" to the testimony of the state's witnesses. *Id.*

We incorporate by reference the proof set out in our Statement of Substantive Facts to support our position that the prosecution presented substantial credible evidence of

Betts' guilt of possession of cocaine and felony eluding of a police officer. As to the first conviction, this case is similar to *Jones v. State*, 801 So.2d 751, 757 (Miss.App.2001), wherein the Court of Appeals stated the following:

> The State contends that the evidence against Jones supports the verdict. Jones was acting nervous while in the convenience store, prompting the call to the police. He left the store upon seeing the approach of the officers, without making his purchase. Jones fled away in his vehicle, in the wrong lane on a hill, and did not stop for the officers when they flashed their lights at him. Jackson testified that Jones stated that he could not stop for the police because he had "drugs or something" on him. After Jones lost control of his vehicle and wound up in a ditch, Washington saw Jones flee the vehicle and throw something on the pavement as he ran away. The officers searched the area where Jones threw down the items, and found several rocks that proved to be cocaine. They found more in a plastic bag on the bank of the ditch where the car came to rest.

The Court went on to hold that the verdict of guilty was supported by legally sufficient proof and was not contrary to the overwhelming weight of the evidence. In this case, the officer found cocaine within a couple of inches of the defendant as he was lying in an open field. The reasonable inference was that the defendant had had dominion and control over the contraband, and that he had put it there. The court did not err in refusing to disturb the jury's resolution of this factual issue.

Likewise, the state presented ample proof that the defendant was guilty of felony eluding of a police officer, defined as follows by MISS.CODE ANN. § 97-9-72 (1972) (as amended):

> (1) The driver of a motor vehicle who is given a visible or audible signal by a law enforcement officer by hand, voice, emergency light or siren directing the driver to bring his motor vehicle to a stop when such signal is given by a law enforcement officer acting in the lawful performance of duty who has a reasonable suspicion to believe that the driver in

> question has committed a crime, and who willfully fails to obey such direction shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed One Thousand Dollars ($1, 000.00) or imprisoned in the county jail for a term not to exceed six (6) months, or both.
>
> (2) Any person who is guilty of violating subsection (1) of this section **by operating a motor vehicle in such a manner as to indicate a reckless or willful disregard for the safety of persons or property, or who so operates a motor vehicle in a manner manifesting extreme indifference to the value of human life,** shall be guilty of a felony, and upon conviction thereof, shall be punished by a fine not to exceed Five Thousand Dollars ($5,000.00), or by commitment to the custody of the Mississippi Department of Corrections for not more than five (5) years, or both.
>
> (emphasis added)

The state proved that Betts not only failed to yield to the officers' blue lights, but fled at a high rate of speed, tried to pass an officer's car on the right shoulder of the road, sped through a yield sign, and drove his vehicle the wrong way in a yield lane entering a state highway. From this evidence a reasonable juror could conclude that Betts exhibited reckless or willful disregard for the safety of people or property and/or manifested extreme indifference to the value of human life, and that he was guilty of felony, rather than misdemeanor, eluding of a police officer. The trial court properly refused to disturb the jury's verdict of guilty on this count.

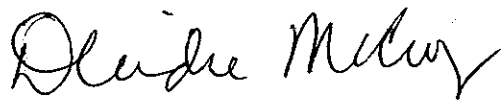
For these reasons, Betts' final proposition should be denied.

CONCLUSION

The state respectfully submits that the arguments presented by Betts have no merit. Accordingly, the judgment rendered against should be affirmed.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI



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CERTIFICATE OF SERVICE

I, Deirdre McCrory, 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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