IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

GLORIA B. CATLING — APPELLANT

VS. — NO. 2009-KA-2029

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATE CASES

STATE STATUTES

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STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Amite County, Mississippi and a judgment of conviction for one court of Grand Larceny (Count I) and three counts of Fraudulent Use of a Debit Card and Identity to Obtain Thing of Value (Counts II, III and IV) entered against Gloria B. Catling following a jury trial, Judge Forest A. Johnson, Jr. presiding. The trial court sentenced Catling to eight years on Count I; four years each on Counts II, III and IV to run concurrent with each other, but consecutive to the eight-year sentence in Count I. (CP 36-37; Tr. 121-22). After denial of post trial motions, Catling appealed raising the following issues.

STATEMENT OF THE ISSUES

ISSUE I. Whether the evidence was sufficient to support the verdict in Count I?

ISSUE II. Whether the verdicts in Counts II, III and IV were against the overwhelming weight of the evidence?

STATEMENT OF THE FACTS

Juanita Johanningmeir (hereinafter "Johanningmeier") testified she hired Gloria Catling (hereinafter "Catling"), to sit with her ill husband. According to Johanningmeier, after Catling had been working for her about a month, she was balancing her bank statement and saw a $208.00 unauthorized charge to her debit card to Dish Network on November 3; a $283.14 unauthorized charge to Dish Network on November 7; and an unauthorized charge to Direct Insurance. (Tr.39-41).(Prior to trial, Count V dealing with a $108.00 unauthorized charge to Magnolia Electric was dismissed at the request of the State.) (Tr.68). At the suggestion of her daughter, Johanningmeier checked her jewelry to make sure nothing was missing and immediately discovered three rings missing. (Tr. 69-70).

After checking with her bank, Johanningmeier notified the Sheriff's Department of the unauthorized charges. According to Johanningmeier, the day after the sheriff's department went to Catling's home to question her, Retta Catling, the defendant's mother, showed up at Johanningmeier's house. Johanningmeier asked Retta Catling (hereinafter "Retta") if she had seen Johanningmeier's missing rings at her house. (Tr. 71). Mrs. Johanningmeier testified that Retta denied knowledge of the rings but returned 30 minutes later with them. (Tr. 71).

Slyvania Koon with First Bank testified at trial as to the bank's records, procedures and investigation of the unauthorized charges. (Tr 48-52).

Officer Nathan Toney testified as to his investigation and interview with Catling. Catling wrote a statement "I, didn't mean to do it, but I did. I don't remember how I did it, but I did. Please tell Ms. Nita Johanningmeier that I am sorry. I used her debit card so she say to pay my insurance, Dish Network, Dish Network and I was at her home and Direct Insurance once while I was at her home." (Exhibit S-3; Tr. 61). According to Officer Toney, Catling denied any knowledge of the

jewelry.(Tr. 62-62).

Retta Catling (hereinafter "Retta") testified that when she went to Mrs. Johanningmeier's house, Johanningmeier asked her if Gloria had her rings. Retta told Mrs. Johanningmeier that Gloria claimed Mrs. Johanningmeier gave her the rings. (Tr. 77).

Catling and her son lived with Retta. The Direct Insurance account was in Catling's name and the Dish Network account was in her mother's name, Beatrice Catling, which happens to be Gloria Catling's name also. (Tr. 80-81).According to Retta, Catling called her for the Dish Network account information and the insurance account information. (Tr. 78-79). Retta testified she never heard Mrs. Johanningmeier give Catling permission to pay the accounts with the debit car, but Catling told her that she did. (Tr. 82-83). Retta testified Catling called her for the account information and when she would tell her daughter a number, Catling would repeat the number, and then she heard Mrs. Johanningmeier repeat the number Catling said. (Tr. 70).

Gloria Catling testified at trial in her own defense. According to Catling, Mrs. Johanningmeier gave her extra money to help compensate for the difference in her previous salary at Sanderson Farms and the money Mrs. Johanningmeier paid her for sitting with her husband. (Tr. 85-86). Catling testified

> A: I asked her for some more hours, could she give me some more hours because I had some bills that was due, and she said that she would work with me. She would help me pay some of them without giving me so many more hours because *she couldn't afford to do it.* She told me the insurance wouldn't allow her to pay all that.
>
> Q: And so then what did she do?
>
> A: She told me about that she could help me the next day. She said do you have your account number. I said, no, ma'am. She said can you bring it when you come to work the next day. I said, yes, ma'am.
> (Tr. 87). (Emphasis added by Appellee).

The following day Catling forgot to bring the account numbers so she called her mother Retta to get the information. Then Catling called the companies with her information and put Mrs. Johanningmeier on the phone to give the debit card information. (Tr. 88-89).

Catling testified Mrs. Johanningmeier was going through her jewelry and asked Catling if she wanted the four rings and a bracelet.(Tr. 94). Mrs. Johanningmeier wanted Catling to have the jewelry.(Tr. 92).

Catling admitted on cross examination that the Dish Network and Direct Insurance bills were hers and not her mother's or grandmother's. (Tr. 96). The Dish Network bill was $283.14 and the Direct Insurance bill was $168.33. (*Id.*). Catling also admitted Johanningmeier regularly paid her by check during the month she had worked for her. Mrs. Johanningmeier paid her with checks for $132, $40, 88, $44, $110, $87, and $88. (*Id.*).

SUMMARY OF THE ARGUMENT

Catling's challenge to the sufficiency and weight of the evidence should be denied. The jury's verdicts and the sentences of the trial court should be affirmed. The jury's verdict of grand larceny is supported by legally sufficient evidence. Under the holdings of *Williams v. State*, 994 So.2d 821 (Miss.Ct.App.2008); *Ezell v. State*, 956 So.2d 315 (Miss. 2006); and *Smith v. State*, 881 So.2d 908, 909(¶ 2) (Miss.Ct.App.2004), the State presented sufficient evidence to establish beyond a reasonable doubt that the value of the rings was $500 or more.

Reviewing the evidence in the light most favorable to the State and giving the State the benefit of all favorable inferences that may reasonably be drawn from the evidence a fair-minded juror could have found that Catling stole Johanningmeier's jewelry, valued at Five Hundred Dollars or more, and also made the unauthorized charges to Johanningmeier's debit card.

The jury received conflicting testimony regarding the use of Johanningmeier's debit card to pay Catling's bills. The trial court properly left resolution of that conflict with the jury and did not abuse its discretion in refusing Catling's motion for a for a new trial.

ARGUMENT

PROPOSITION I. THERE WAS SUFFICIENT CREDIBLE EVIDENCE TO SUPPORT CATLING'S CONVICTION OF GRAND LARCENY.

A. Sufficiency of the evidence.

In reviewing issues of legal sufficiency, the reviewing court does not "ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt." *Bush v. State*, 895 So.2d 836, 843 (¶16) (Miss. 2005) (quoting *Jackson v. Virginia*, 443 U.S. 307, 315 (1979)). Rather, the Court will view the evidence in the light most favorable to the State and determine whether any rational juror could have found that the State proved each element of the crime charged beyond a reasonable doubt. *Id.*

Catling was charged and convicted under Mississippi Code section 97-17-41(1) which makes it a crime to take and carry away, feloniously, the personal property of another, of the value of Five Hundred Dollars ($500.00) or more. . .." When an item's value is an element of the crime, the State must provide proof as to the value of the item. *Henley v. State*, 729 So.2d 232, 238(¶25) (Miss.1998).

Catling contends the State failed to prove the value of the stolen jewelry totaled $500 or more.

Catling relies on *Williams v. State*, 763 So.2d 186, 187 (¶¶1-3) (Miss.Ct.2000) for the proposition that Johanningmeier's testimony alone was insufficient to establish that the market value of the rings at the time of the theft was $500 or more.

In the case *sub judice*, the sole evidence of the value of the rings is Mrs. Johanningmeier's testimony. The State submits this is sufficient. She testified one ring was a wide 14 carat gold band with a solitaire diamond and a diamond on each side; another ring was 14 carat gold with a cluster or mound of diamonds. (Tr. 70). While it is unclear which ring she is referring to, Mrs.

Johanningmeier testified the ring was valued at more than $500. (*Id.*). The third ring was a cocktail ring, with and an elongated diamond in the center of it and the fourth ring was a little gold signature ring. (*Id.*). Johanningmeier also testified that the rings were not costume jewelry *(Id.*).

In *Smith v. State*, 881 So.2d 908, 909(¶ 2) (Miss.Ct.App.2004), this Court affirmed Smith's conviction for attempted grand larceny pertaining to truck rims. The sole evidence of the value of the rims was the owner's testimony that he had paid between $3,000 and $4,000 for the rims. *Id.* at 910(¶ 11). This Court ruled the testimony about the original purchase price was not the strongest possible evidence of market value, but it circumstantially provided a basis from which the jury could reasonably infer that the rims were worth at least $250 at the time of the theft. *Id.*

In *Ezell v. State*, 956 So.2d 315 (Miss. 2006), this Court affirmed Ezell's conviction for receiving stolen property(a motorcycle and trailer) valued at $500. The sole evidence of the property being valued at over $500 was the owner's testimony about the purchase price for the used motorcycle four years earlier and the purchase price for the trailer bought two or three years before the theft.

Also in *Williams v. State,* 994 So.2d 821 (Miss.Ct.App.2008), this Court held evidence permitting inference of the replacement value of stolen property was sufficient to support a conviction of grand larceny, where the statute in effect at time of defendant's offense penalized theft of property with value over $250, and the victim testified that he could not recall all items which had been in the tool box stolen by the defendant, but that one item had cost him $150, that replacement cost of such item would be between $200 and $300, and that approximate value of all items stolen was between $500 and $550.

As in *Smith*, *Ezell* and *Williams*, the testimony *sub judice* was such that a reasonable jury could have inferred that the four 14 carat gold rings, three of which had diamonds, had a market value in excess of $500 at the time Gloria Catling took them from Mrs. Johanningmeier. The

evidence was sufficient to sustain Catling's conviction of grand larceny.

B. Weight of the evidence. Catling claims that the weight of the evidence showed that Catling took the rings with Juanita's consent. "When reviewing a denial of a motion for a new trial based on an objection to the weight of the evidence, we will only disturb a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice." *Bush*, 895 So. 2d at 844 (¶18) (citing *Herring v. State*, 691 So. 2d 948, 957 (Miss. 1997)). On a motion for new trial, the circuit court sits as a thirteenth juror and only in exceptional cases in which the evidence preponderates heavily against the verdict will a new trial be granted. Id. (citing *Amiker v. Drugs For Less, Inc.*, 796 So. 2d 942, 947 (¶18) (Miss. 2000)). This Court's review requires that it weigh the evidence in the light most favorable to the verdict. *Id.*

Mrs. Johanningmeier's testified the rings were missing, she did not testify that she gave the jewelry to Catling. (Tr. 69-70) Officer Toney testified Catling denied any knowledge of the missing jewelry even though Catling later claimed Johanningmeier gave her the rings. (Tr.62-63). Catling's testimony that Mrs. Johanningmeier gave her the rings after she had only been working for her about a month is just not believable. As discussed more fully in Proposition II, witness credibility is an issue for the jury.

Looking at the evidence as a limited "thirteenth juror" in this case and viewing the evidence in the light most favorable to the verdict, it cannot be said that the guilty verdict would sanction an unconscionable injustice. The evidence does not preponderate heavily against the verdict, and the trial court did not abuse its discretion in denying Catling's motion for a new trial. This issue is without merit.

PROPOSITION II: THE WEIGHT OF THE EVIDENCE SUPPORTED THE JURY'S VERDICTS IN COUNTS II, III AND IV.

Catling alleges that the verdicts were against the overwhelming weight of the evidence and that the circuit court erred in denying her motion for a new trial. She contends that it was not possible for a reasonable jury to have found her guilty beyond a reasonable doubt. The supreme court has held the following with regard to an appeal which involves a claim that a verdict is against the overwhelming weight of the evidence: In determining whether a jury verdict is against the overwhelming weight of the evidence, this 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. Only when 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. *Boone v. State*, 973 So. 2d 237, 243 (¶¶ 20-21) (Miss. 2008) (quoting *Herring v. State*, 691 So. 2d 948, 957 (Miss. 1997)).

Catling argues that the weight of the evidence shows that Johanningmeier agreed to help Catling pay her bills. However, Catling testified Mrs. Johanningmeier could not afford to work her any more hours yet she asks us to believe that Johanningmeier could afford to give her over $600 extra money. (Tr. 96). Catling wrote a statement "I, didn't mean to do it, but I did. I don't remember how I did it, but I did. Please tell Ms. Nita Johanningmeier that I am sorry. I used her debit card so she say to pay my insurance, Dish Network, Dish Network and I was at her home and Direct Insurance once while I was at her home." (Exhibit S-3; Tr. 61).

It boils down to whether the jury believed Catling's and Retta's version of events or Johanningmeier's conflicting testimony. The supreme court held that conflicting testimony does not evince overwhelming evidence; "[w]here the verdict turns on the credibility of conflicting testimony

and the credibility of the witnesses, it is the jury's duty to resolve the conflict." *Nicholson v. State*, 523 So.2d 68, 71 (Miss.1988) (citations omitted). The jury heard the differing versions and chose to believe Mrs. Johanningmeier.

CONCLUSION

The state respectfully submits the arguments presented by Catling are without merit. Accordingly, the judgments entered below should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Lisa L. Blount, 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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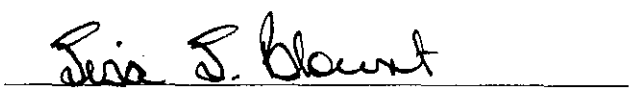
This the 31st day of March, 2010.



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