

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

STEVE RONCALI

APPELLANT

VS.

NO. 2006-KA-01224-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF APPELLANT

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CERTIFICATE OF INTERESTED PERSONS

The undersigned Counsel of Record hereby certifies that the following listed persons have an interest in the outcome of this Appeal. These representations are made in order that the Justices of this Court may evaluate possible disqualifications or recusal.

STEVE RONCALI, Appellant;

STAN PERKINS, Attorney for the Appellant;

HALLIE GAIL BRIDGES, Assistant District Attorney of the Fourth Circuit
Judicial District of the State of Mississippi, Attorney for the
Appellee

T. MURRAY WHALEN, ESQ., Trial Counsel for Appellant

RICHARD A. SMITH; Presiding Circuit Judge of the Fourth Circuit
Judicial District of the State of Mississippi.

WITNESSES: DEPUTY HEZZIE MURRY, RON SCHLATTER, DR.
MICHAEL WAYNE MONTESI, CONNIE KUHN, CHARLES ELDRIDGE,
DEPUTY WOODY SPENCER.

Respectfully Submitted,

STEVE RONCALI

By: 

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STATEMENT REGARDING ORAL ARGUMENT

The facts and legal arguments are adequately presented in the brief and record, and the decisional process would not be significantly aided by oral argument.

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APPELLEE

STATEMENT OF THE ISSUES

I.

WHETHER THE LOWER COURT SHOULD HAVE GRANTED THE APPELLANT'S PEREMPTORY STRIKE OF JUROR NO. 1.

II.

WHETHER APPELLANT'S CONVICTION FOR SIMPLE ASSAULT ON A LAW ENFORCEMENT OFFICER WAS DOUBLE JEOPARDY OR REQUIRED A LESSER-INCLUDED JURY INSTRUCTION OF RESISTING ARREST.

STATEMENT OF THE CASE

On December 16, 2005, Steve Roncali, a 33 year-old white male, was driving down Highway 82 in Indianola, Mississippi, when he was stopped by Deputy Hezzie Murry of the Sunflower County Sheriff's Department, purportedly for erratic driving. (T. 54-55) Unbeknownst to Roncali, however; the real reason for the stop had a lot to do with his father-in-law contacting the officer by cell-phone to let him know where Roncali was and that Roncali had no driver's license. (T. 161-163) During the ensuing stop, Deputy Murry ascertained that Roncali's license was suspended and that he had no insurance. He called for back-up, and after doing so, noticed that Roncali had what appeared to be some type of drugs in his hand. (T. 64-71) According to Murry, as he attempted to reach for the drugs, Roncali hit him in the stomach, even though

Roncali was still seated in his vehicle. The father-in-law, who called in the location and direction of Roncali to Deputy Murry, sat across the street and watched the incident but claimed he never saw his son-in-law strike the officer. (T. 159-160)

Roncali was arrested at the scene and hand-cuffed. According to Deputy Woody Spencer, he was pulled from the vehicle after he arrived on the scene to assist Deputy Murry and placed in handcuffs. (T. 169-170) Connie Kuhn, the mother-in-law of Roncali, contradicts this version as she states only one officer and patrol car was at the scene when she saw her son-in-law hand-cuffed and standing outside of his vehicle. ((T. 149-150) Ironically, the video camera in Murry's vehicle which could resolve the dispute was running at the time but not taping. (T. 63) Deputy Murry maintains that Roncali swallowed what was in his hand before he was removed from the vehicle and for that reason he was taken to the hospital where a urinalysis was conducted and methamphetamine determined to be in his system. (T. 124-127) The same attending physician examined Deputy Murry and stated he complained of abdominal pain and anterior chest wall pain (T. 120), but the Doctor did not note any bruising. (T. 131-132)

Roncali was charged with five misdemeanors: driving while license suspended, careless driving, seatbelt violation, no proof of liability insurance, and RESISTING ARREST (Exhibits D1 through D3). Additionally, Roncali was indicted for Possession of less than .1 grams of amphetamine (Count 1) and Simple Assault on a Law Enforcement Officer (Count 2) . (R.E. 5-6) Trial was held on June 19, 2006 before the Honorable Richard A. Smith in the Sunflower County Circuit Court on the felony charges. The jury deadlocked on the Possession charge but convicted the Defendant of Count Two (Simple Assault on Law Enforcement Officer). (T. 217) The

Defendant, Steve Roncali, was sentenced to the maximum of five years on June 30, 2006. (R. E. 20-21) He is currently serving this sentence in the custody of the Mississippi Department of Corrections.

SUMMARY OF ARGUMENTS

The Appellant raises two issues on appeal. The first issue is whether or not the lower Court should have granted the requested peremptory jury challenge exercised by Defendant's counsel but contested by the State. It is the Appellant's contention that a sufficient "race neutral" reason was given for the challenge.

The Appellant further contends the conviction of the Defendant for the Simple Assault of a Law Enforcement Officer amounts to Double Jeopardy inasmuch as the very same facts that charge him for resisting arrest are the same that convict him of the felony and as such amount to double jeopardy, particularly given the lack of any serious injury to the officer. Additionally, the Appellant contends the Court should have at least given the jury a lesser included offense instruction of resisting arrest.

ARGUMENTS

I.

WHETHER THE LOWER COURT SHOULD HAVE GRANTED THE APPELLANT'S REQUEST FOR A PEREMPTORY JURY CHALLENGE OF JUROR ONE.

When the jury panel was tendered to Defense Counsel after the state had exercised its

challenges, there were only two white jurors left in the group to be chosen from. (T. 38-39)

Keeping in mind that the Defendant is white, Defense Counsel sought to strike Juror One and Juror Seventeen, the two remaining white potential jurors. The State invoked a *BATSON* challenge and the Court promptly requested a "race-neutral" reason for each requested peremptory challenge. While the Court allowed the challenge to Juror Seventeen, the Court rejected defense counsel's reason for striking Juror One. Defense counsel argued: "Throughout the questioning—through my observation of Juror 1, he more or less paid attention to...State's counsel. And at the same time on one occasion, he looked away from me when I asked him questions. When I asked him the question about me—he looked away from me, Judge, when I asked him a question about being impartial and fair. He just looked away from me." (T. 39) Defense counsel went on to say: "Well, he looked away from me, Judge, and that's why I'm striking him. He didn't pay attention to me. When I ask you a question directly, 'Can you be fair and impartial,' I would think you would look directly at me and you'd nod your head or answer affirmatively. He didn't. He just turned away." (T. 40)

The State denied seeing the juror look away and the Court stated he did not see it. (T. 40-41) The Court then denied Defense counsel's request to peremptorily challenge the Juror and Juror One was forced on the Defense.

When the tables are turned however, prosecutors are constantly being allowed to use reasons as those given by Defense Counsel to strike a potential juror. In *United States v. Ruiz*, 894 F.2d 501 (2nd Cir., 1990), challenges based on "facial expressions", non-responsiveness, etc. were held to be sufficient to provide a race neutral reason to strike a juror, which, incidentally was of the

same race as the Defendant.

Likewise, in *United States v. Terrazas-Carrasco*, 861 F.2d 93 (5th Cir. 1988) factors such as eye contact, demeanor, age, marital status, and body language were considered “race-neutral” reasons for exclusion from a jury trying a defendant of the SAME race. Once again, it is significant that Defense Counsel was attempting to strike a juror of the same race as Roncali, an indication in and of itself that she was not attempting to gain a racial advantage in the jury pool. The Appellant argues now that what is good enough for the “goose” should be good enough for the “gander.”

II.

WHETHER THE DEFENDANT’S CONVICTION FOR SIMPLE ASSAULT ON A LAW ENFORCEMENT OFFICER AMOUNTED TO DOUBLE JEOPARDY OR REQUIRED A LESSER-INCLUDED INSTRUCTION OF RESISTING ARREST

Resisting lawful arrest is defined by Miss.Code 97-9-73 as an act by a person “to obstruct or resist by FORCE, or VIOLENCE, or threats, or any other manner, his lawful arrest...by any state, local or federal law enforcement officer, etc.” There can be no doubt that Roncali was being detained and, therefore, in effect, under arrest at the time of his traffic stop. His statement that “I’m not going back to jail.” (T. 56) clearly indicates his belief that he was in the process of being arrested.

In *Murrell v. State*, 655 So. 2d 881 (Miss. 1995), rehearing denied, this Court felt it was extremely important that the jury be allowed to consider whether an officer was “injured” within the meaning of the felony statute of Miss. Code 97-3-7. In this instance, no consideration was

allowed by the Court although the injury sustained by Deputy Murry was greatly contested by the Defense and not supported by strong medical evidence.

What is even more troublesome is the fact that Roncali was hit with both charges despite evidence that the same action he allegedly took (punching the officer) created two separate charges but resulted from a single act. The double jeopardy provision of both our Federal and State constitutions protects an accused from multiple punishments for the same criminal conduct. See *Ex parte Lange*, 85 U.S. 163, 21 L.Ed. 872 (S. Ct. 1874) along with *U.S. v. Benz*, 282 U.S. 304, 75 L. Ed. 354, 51 S. Ct. 113 (S. Ct. 1931).

CONCLUSION

For the reasons cited above, reversal of the conviction of the Defendant is warranted.

RE: STEVE RONCALI
NO. 2006-KA-01224-COA

CERTIFICATE OF SERVICE

The undersigned Attorney of Record for the above Appellant does hereby certify that he has this date mailed by regular United States mail, postage prepaid, a true and correct copy of the foregoing Brief of Appellant to Honorable Mike Moore, Attorney of the State of Mississippi, at Post Office Box 220, Jackson, MS 39205; a copy to Honorable Hallie Gail Bridges, Assistant District Attorney for the Fourth Circuit Court District, at Post Office Box 1046, Indianola, MS 38751; and a copy to the Honorable Richard A. Smith, Circuit Judge in and for the Fourth Circuit Court District of the State of Mississippi, at Post Office Box 1953, Greenwood, MS 38935; and a copy to the Appellant, Steve Roncali at Unit 26a in Parchman, MS 38738.

THIS THE 7th DAY OF September, A.D., 2007.



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CERTIFICATE OF COMPLIANCE

Pursuant to Supreme Court rules, the undersigned certifies this brief complies with the type-volume limitations of the Supreme Court rules.

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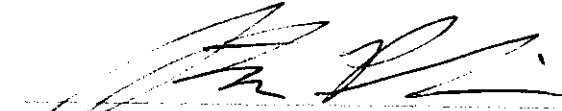
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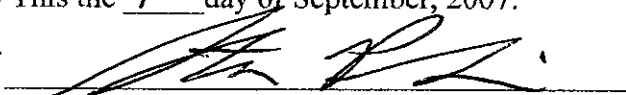
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CONCLUSION

For the reasons cited above, reversal of the conviction of the Defendant is warranted.

RESPECTFULLY SUBMITTED This the 7th day of September, 2007.


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