IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

GREGORY DEON JONES — APPELLANT

VS. — NO. 2006-KA-1994-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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VS. **NO. 2006-KA-1994-COA**

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STATEMENT OF THE ISSUES

I. Whether the fruits of the arrest should have been suppressed.

II. Whether there was probable cause to warrant defendant's arrest.

III. Whether the trial court erred in denying defendant's Motion to Suppress.

IV. Whether the photo line-up was improper.

V. Whether the indictment should have been quashed.

VI. Whether the trial court erred in admitting the knife, shirt and photo line-up as evidence.

VII. Whether the trial court erred in denying defendant's Motion for Mistrial.

VIII. Whether trial court erred in not granting defendant's Motion for New Trial or in the alternative Judgment Notwithstanding the Verdict.

STATEMENT OF THE CASE

Gregory Deon Jones appeals to this Court, his jury conviction of armed robbery resulting in a life ntence without the possibility of parole as a violent habitual offender, pursuant to an order entered by the Honorable Judge Samac S. Richardson on April 14, 2006. Jones contends that: (1) the fruits of this arrest should have been suppressed; (2) no probable cause existed to warrant his arrest; (3) the court below erred by denying defendant's Motion to Suppress; (4) the photo line-up was suggestive and improper; (5) the indictment should have been quashed; (6) the court below erred in admitting the knife, shirt and photo line-up into evidence; (7) the court below erred in not granting defendant's Motion for Mistrial; (8) the court below erred in not granting Jones' Motion for a Directed Verdict.

STATEMENT OF FACTS

A man entered the Super Saver Exxon gas station on the corner of Old Brandon Road and Pearson Road in Pearl, Mississippi at about eight o'clock (8:00am) the morning of February 5, 2005, bought a coffee and exited the store. (TR. 87.) He re-entered about five minutes later, pulled a knife out on the store clerk,[1] demanded that she open the cash register, robbed the store of two hundred and forty-eight dollars ($248.00) and fled the scene. (TR. 87-88; A.B. Ex. 2.) The store clerk ran out of the store, hopped into the car of another customer, explained what had just occurred. (TR. 91.) The two of them drove to the pawn shop across the street and reported the incident to the Pearl Police. *Id.*

The Pearl Police Department informed Detective Mark Logazino of the robbery later on that morning. (TR. 62.) When he arrived to the scene of the crime, Detective Logazino spoke with the store clerk (who gave him a description of the armed robber) and viewed the store camera footage. (TR. 63-64). Logazino then contacted the Jackson Police Department's Detective Domino. From

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[1]Joanne Yurtkuran was the only attending clerk at the store at the time. (TR. 66.)

his conversation with Detective Domino, Logazino was able to identify Gregory Deon Jones as a possible suspect. (TR. 66). Later on that day, the store clerk identified Jones in a photo line-up comprised of six males with similar characteristics. (TR. 67). After the store clerk/victim identified Jones as the armed robber, a warrant was issued for his arrest. *Id.*

On February 6, 2005, one day after the robbery took place, Jones was spotted by Detectives Reginald Cooper and Tommy Jones at an Exxon gas station at the intersection of County Line Road and Ridgewood Road. (TR. 72.) After watching him for a couple minutes, Detectives Cooper and Jones began to approach the defendant, who then took off running. *Id.* The defendant ran around the fence behind the Exxon Station to the rear parking lot of the Hilton Hotel on County Line Road. (TR. 73.) While police were chasing the defendant, they saw him twice reach into his pocket and discard what appeared to be a weapon. *Id.* Detective Cooper recovered a knife from where the defendant was seen discarding it. (TR. 76). The store clerk later identified this knife as the one used in the commission of the armed robbery. (TR. 90-91.)

The defendant was apprehended inside the Hilton Hotel lobby/dining area. (TR. 73.) When he was spotted and arrested, the defendant was wearing the same dark colored shirt bearing a "G" on the left chest area, as identified by the store clerk and visible in the video footage and photographs from the Exxon camera. (*Id.*; TR. 71; Ex. 3 & 4.) At trial, the store clerk identified: (1)Gregory Deon Jones as the armed robber; (2) the shirt Jones was wearing when arrested as the same in which he committed the armed robbery; and (3) the knife that Jones discarded while fleeing police as the same used in the commission of the armed robbery. (TR. 89-95.)

After a short time of deliberation by the jury, the foreperson told the judge that they were one vote short of a unanimous guilty verdict, but seemed to be "deadlocked," because one juror was not "considering any discussions." (TR. 125-126) Finding the jury not to be "hopelessly deadlocked," the trial judge excused the jurors for the night, after explaining to them that they were not to discuss

the case with anyone and were to reconvene the following morning to continue deliberations. (TR.125-128.) The following morning the jury returned a guilty verdict. (TR. 129.) A repeat-offender, Jones was sentenced to life without the possibility of parole. (TR. 139.) Jones sought to appeal the trial court's decision with the assistance of the Mississippi Office of Indigent Appeals. Counsel at that office filed a brief on behalf of Jones, stating that "there are no issues that counsel [could] in good faith present to the Court in this appeal." (A.B. 3.) Jones continued to pursue this appeal with the filing of a pro se brief with the Court on July 9, 2007.

SUMMARY OF THE ARGUMENT

The issues raised by the defendant in this appeal are without merit. The State has produced overwhelming evidence to prove beyond any shadow of doubt that Jones committed this armed robbery, and was fairly tried and convicted of that crime without any violation of his due process rights. If there were any procedural or evidentiary mistakes in this matter, such errors were "harmless." Accordingly, the Court should find the issues raised to be unsupported in fact or law, and affirm the decision of the court below.

STANDARD OF REVIEW

The standards of review for each of the issues are discussed in the argument below.

ARGUMENT

I. THE FRUITS OF THE ARREST SHOULD NOT BE SUPPRESSED.

Jones first contends that the fruits of the arrest should have been suppressed, alleging that Jackson Police did not have a probable cause affidavit, nor arrest warrant. He further points out that the date on the warrant is in conflict with the date of his arrest, the store clerk did not sign the affidavit and cites *Henry v. State*, 486 So.2d 1209, 12 (Miss. 1986), stating that "more than bare suspicion" is required to have probable cause.

"In reviewing this issue, this Court adopts a mixed standard of review. Determinations of reasonable suspicion and probable cause should be reviewed de novo." *Dies v. State*, 926 So.2d 1067, 1069 (Miss.App 2007) *citing Ornelas v. United States*, 517 U.S. 690, 699, 116 S.Ct. 1657, 134 L.ed2d 911 (1996); *Floyd v. City of Crystal Springs*, 749 So.2d 110, 113 (Miss. 1999). "However, this Court is restricted to a de novo review of the trial judge's decision based on historical facts reviewed under the substantial evidence and clearly erroneous standards." *Id. citing Floyd*, 749 So.2d at 113.

The record reflects that an effective warrant for his arrest was issued the day of the crime, supported by a signed affidavit which properly identified the affiant, all of which was supported with ample proof for probable cause. Jones argues that the affidavit is ineffective because it was signed by the police officer, and the warrant is ineffective because it was signed two days after Jones' arrest. This argument is without merit; the courts of the United States and Mississippi have long been held:

> the sworn statement of the affiant is the most critical aspect of the validity of the affidavit rather than the placing thereon of the signature of the issuing authority. In *Huff v. Commonwealth*, 213 Va. 710, 194 S.E.2d 690 (1973), the affiant did not sign the affidavit for a search warrant until the search was made, whereas the issuing officer did sign the jurat. The Virginia High Court stated: 'It is the oath that solemnizes and verifies. If the affiant is sufficiently identified in the body of the affidavit or in the jurat, his signature is not essential.

Powell v. State, 355 So.2d 1378, 1380 (Miss. 1978).

Detective Mark Logazino stated at trial that the arrest warrant was issued the day of the crime (Saturday), (TR. 68-69) and Detective Reginald Cooper testified that the Jackson Police Department was contacted on the day of the crime, and he was given the name and description of Jones. (TR. 71). Jones was found and arrested the day after the crime (Sunday), and although the arrest warrant was issued on the day of the crime, a judge did not sign it until February 8, 2005 (Tuesday). Nonetheless, a police officer may lawfully arrest someone where they have been informed by a dispatcher that there is an outstanding warrant for the defendant's arrest. *Jones v. State*, 799 So.2d 171 (Miss.App. 2001).

II. THERE WAS PROBABLE CAUSE TO WARRANT DEFENDANT'S ARREST.

As mentioned above, Jones claims there was a lack of probable cause for his arrest. "For a felony arrest warrant, a police officer must have (1) reasonable cause to believe that a felony has been committed, and (2) reasonable cause to believe that the person proposed to be arrested is the one who committed it. *Conerly v. State*, 760 So.2d 737, 740 (Miss. 2000). Again, the record makes it abundantly clear there was ample evidence in support of his arrest. Detective Mark Logazino was given a description of the suspect, he viewed footage from Exxon's store camera and discussed possible suspects with Detective Domino of the Jackson police. From there he was given Jones' name and mugshot. In a line-up with six other individuals, the store clerk identified Jones with one hundred percent confidence. Based on all of this evidence, a warrant for arrest was issued the same day the crime was committed.

The Jackson Police Department was notified of the armed robbery and given Jones' name and description. Low and behold, Detective Cooper and his partner saw Jones the next morning, at another Exxon, in the same clothes as described by the clerk and apparent in the

video footage. And what did Jones do when he was approached by the officer? He fled, discarded a knife, which was described and later identified by the clerk and also visible in the video footage, and tried to hide under a table in the Hilton Hotel. Under the totality of circumstances, there was sufficient probable cause for the issuance of the warrant and the arrest of Jones.

III. THE TRIAL COURT WAS CORRECT IN DENYING DEFENDANT'S MOTION TO SUPPRESS.

Jones claims the court below erred by denying his Motion to Suppress the knife, shirt and his mugshot from being admitted at trial because such items were more prejudicial than probative. These items were relevant and highly probative for the same reasons as discussed above, and proved to the jury beyond a shadow of doubt that Jones was the same man that robbed the Exxon gas station with a knife. "A trial judge enjoys a great deal of discretion as to the relevance and admissibility of evidence. Unless the judge abuses this discretion so as to be prejudicial to the accused, the Court will not reverse this ruling." *Jefferson v. State*, 818 So.2d 1099, 1104 (Miss. 2002) *citing Fisher v. State*, 690 So.2d 268, 274 (Miss. 1996). The court below admitted them into evidence after finding them to be more probative than prejudicial and that decision should be affirmed.

IV. THE PHOTO LINE-UP WAS PROPER.

Jones next challenges the photo line-up, claiming that it was suggestive and does not depict him as he looked at the time of identification. The trial transcript reveals that Detective Logazino received a photograph of Jones and five other individuals from Detective Domino of the Jackson Police Department. The following line of questioning was directed to Detective Logazino at trial regarding the photo line up:

> Q. And did the photo lineup – were the people who were depicted there, did they have similar builds?

A. Yes, sir.
Q. Were they all males?
A. Yes, sir.
Q. Were they all African American?
A. Yes, sir.
Q. And is that consistent with a photo lineup, as to how one would be prepared.
A. Yes, sir. It is.
Q. So here in the photo lineup you seem to have photographs of people who have similar characteristics.
A. Yes, sir.

(TR. 68.) This photograph was not suggestive, but even if it was, that would not be enough to hold it improper. In such instances, the court should consider the five *Biggers* factors: (1) opportunity of witness to view the criminal at the time of the crime; (2) his/her degree of attention; (3) accuracy of witness' prior description of the criminal; (4) level of certainty exhibited by witness at confrontation; and (5) time between the crime and confrontation. *Neil v. Biggers*, 409 U.S. 188 (1972); *Isom v. State*, 928 So.2d 840 (Miss. 2006). Each of these *Biggers* factors are met in the present case. The video footage reveals the clerk's close proximity to Jones and her opportunity to view him; it is actually harrowing to see him approach her, her reaction (high degree of attention), and to see how close he got to her as he exited the store. She saw a photo line-up including Jones the same day as the crime, identified him with one hundred percent (100%) certainty and he was picked up the next day looking just as she had described him.

V. THE INDICTMENT SHOULD NOT HAVE BEEN QUASHED.

Next, the defendant claims the court below erred by denying his motion to quash the indictment. "The issue of whether an indictment is fatally defective is a question of law and warrants a broad standard of review by this Court. Since the issue is a question of law the standard of review is de novo." *Qualls v. State*, 947 So.2d 365, 369 (Miss.App. 2007) *citing* *Nguyen v. State*, 761 So.2d 873, 874 (Miss. 2002); *Peterson v. State*, 671 So.2d 647, 652

(Miss. 1996).

The State concedes that the original indictment did contain a scrivener's error (an incorrect date) which was cured pursuant to a motion and order granting a date correction. "Under Rule 7.06 of the Uniform Circuit and County Court Rules failure to state the correct date in an indictment shall not render the indictment insufficient. Rule 7.09 provides that 'all indictments may be amended as to form but not as to the substance of the offense charge.'" *Crawford v. State*, 754 So.2d 1211, 1218-19 (Miss. 2000) *citing Baine v. State*, 604 So.2d 258 (Miss. 1992). The trial court's denial of defendant's motion to quash the indictment was proper and should be affirmed.

VI. THE TRIAL COURT DID NOT ERR BY ADMITTING THE KNIFE, SHIRT AND PHOTO LINE-UP AS EVIDENCE.

This issue has already been discussed above. These items were more probative than prejudicial and this Court should not reverse their admission into evidence unless there is a clear abuse of discretion.

VII. THE TRIAL COURT DID NOT ERR IN DENYING DEFENDANT'S MOTION FOR MISTRIAL.

Jones postulates that the court below erred by not granting him a mistrial when the jury reached a "deadlock." After review of the trial transcript, it is apparent the jury was not in a "hopeless deadlock." Rather, the verdict rested on the shoulders of one juror, whom the foreman said was not considering their discussions. (TR. 125.) The judge asked the foreman if he thought that allowing them to "sleep on it" would make a difference, and the foreman agreed that it would. The judge then allowed the jury to retire for the evening and reconvene the next morning, but warned them that they were not to talk with anyone regarding the trial. The next morning the jury reached a unanimous decision.

It has long been the rule, that "a criminal jury should be given ample time to consider

its verdict, and how long it should be held together for that purpose is for the trial judge, and his decision will not be disturbed in the Supreme Court in absence of a showing that the jury was coerced into returning a verdict." *Schwartz v. State*, 12 So.2d 157, 160 (Miss. 1943). In *Schwartz*,

> [t]he jury retired to consider of its verdict late on the afternoon of Saturday. During the morning of Monday following, the jury reported to the court that it had failed to reach a verdict, but was directed by the court to return to its room for further consideration of the case. The jury reported again on Tuesday morning that it had been unable to reach a verdict but was again directed by the court to return to its room for the further consideration of the case. Tuesday afternoon the jury again reported that it was unable to reach a verdict, but was again returned to its room for further consideration of the case. The appellant then requested the court to discharge the jury and enter a mistrial, which the court declined to do, stating that each time the jury reported, all of which reports were voluntarily made by it, some of the members thereof thought that the jury might be able to reach a verdict should it further consider the case.

Id. The jury in *Schwartz* eventually reached a guilty verdict, which was upheld. *Id.* The trial judge proceeding in the present matter with "an abundance of caution," and allowing the jury to retire for the evening was not a clear abuse of his discretion. The denial of Jones' Motion for a Mistrial should be affirmed.

VIII. THE TRIAL COURT DID NOT ERR IN DENYING DEFENDANT'S MOTION FOR A DIRECTED VERDICT.

Motions for a Directed Verdict and for Judgment Notwithstanding the Verdict are reviewed under the same standard. "[A]ll evidence introduced by the prosecution is accepted as true, together with any reasonable inference that my be drawn from that evidence, and, if there is sufficient evidence to support a verdict of guilty, the motion. . .must be overruled." *Jaramillo v. State*, 950 So.2d 1104, 1107 (Miss.App. 2007) *citing* *Odem v. State*, 881 So.2d 940, 945 (Miss.App. 2004).

> Once the jury has returned a guilty verdict this Court is not at liberty to direct that the defendant be found not guilty unless viewed in the light most favorable to the verdict no reasonable, hypothetical juror could find beyond a reasonable doubt that the defendant was guilty. This Court must consider as true all evidence consistent with the Defendant's guilt and the State must be given the benefit of all favorable inferences.

Cortez v. State, 876 So.2d 1026, 1029-30 (Miss.App. 2003) *citing Conners v. State*, 822 So.2d 290, 293 (Miss. 2001) and *McClain v. State*, 625 So.2d 774, 778 (Miss. 1993); *Nelson v. State*, 839 So.2d 584, 586 (Miss.App. 2003).

The evidence is unquestionable. Jones is guilty of armed robbery beyond a reasonable doubt. He received the fair trial he was entitled to by the Constitutions of the United States and Mississippi and the jury verdict he received should be upheld.

CONCLUSION

This Court should find that each of the issues raised by Jones are without merit and affirm the trial court's decision. There is no question that Jones is guilty of armed robbery and the State has proved their case beyond any shadow of doubt. There was probable cause for officers to obtain a search warrant, and said obtained warrant was procedurally effective. Jones was fairly tried and convicted of armed robbery. If there were any procedural or evidentiary mistakes contained therein, such errors were not "reversible errors," nor violations of Jones' due process rights.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, the undersigned counsel of record, do hereby certify that I have this day mailed, a true and correct copy of the attached and foregoing document, by U.S. Mail, first class postage prepaid, to the following persons:

Appellant Gregory Deon Jones, MSP #76663, Unit 29, Building G, Parchman, MS 38738;

Honorable David Clark, District Attorney, P.O. Box 68, Brandon, MS 39043;

Honorable Samac S. Richardson, Circuit Court Judge, P.O. Box 1855, Brandon, MS 39043

This the 14th day of August, 2007.

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