

COPY

In The Court of Appeals of The State of Mississippi

Gregory Deon Jones

APPELLANT

V.

FILED

JUL 03 2007

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

No. 2006-KA-1994-COA

State of Mississippi

APPELLEE

BRIEF OF APPELLANT

GREGORY DEON JONES

MDOC # 76663

Unit 29 Bldg G

Parchman, Ms. 38738

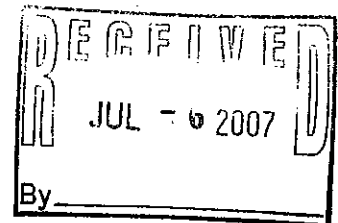


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STATEMENT OF THE ISSUES

ISSUE No. I: WHETHER THE FRUITS OF THIS UNLAWFUL ARREST SHOULD HAVE BEEN SUPPRESSED?

ISSUE No. II: WHETHER PROBABLE CAUSE EXISTED WHICH WARRANTED DEFENDANT ARREST?

ISSUE No. III: WHETHER MOTION TO SUPPRESS SHOULD HAVE BEEN SUPPRESSED?

ISSUE No. IV: WAS THE PHOTO LINEUP SO SUGGESTIVE AS TO VIOLATE DUE PROCESS OF LAW?

ISSUE No. V: SHOULD THE INDICTMENT HAVE BEEN QUASHED?

ISSUE No. VI: DID THE TRIAL COURT ERR IN ADMITTING THE KNIFE, SHIRT AND PHOTO LINEUP AS EVIDENCE?

ISSUE No. VII: WHETHER THE TRIAL COURT ERRED IN NOT GRANTING DEFENDANT MOTION FOR A MISTRIAL?

ISSUE No. VIII: WHETHER TRIAL COURT ERRED IN NOT GRANTING JONES' MOTION FOR A DIRECTED VERDICT?

STATEMENT OF THE CASE

This appeal proceeds from the Circuit of Rankin County's Court of Mississippi, and a judgment of conviction for the crime of armed robbery against Gregory Deon Jones and the resulting mandatory life sentence following a trial held August 8, 2006, Honorable Samac, Richard, Circuit Judge, presiding. GREGORY DEON JONES is presently incarcerated with the Mississippi Department of Corrections.

FACTS

On February 5, 2005 at approximately 8:00 A.M. a man entered the Exxon gas station at the intersection of Old Brandon Road and Pearson Road in Pearl Mississippi. (Tr. 87) He purchased a cup of coffee and then left the store. (Tr. 87) According to Joanne Yurtkuran; the only attending clerk at the store at the time. The man re-entered the store about five or six minutes later and pulled a knife and asked Ms. Yurtkuran to open the cash drawer, which she did, and he took the money and Ms. Yurtkuran ran out and the police were called. (Tr. 87) This statement is in conflict with statement (Tr. 91) Ms. Yurtkuran gave that stated she ran out of the store and got into a car with a customer that was in front of the store with --- she was still in her car and the motor was running. Ms. Yurtkuran opened her car door and got in, and told her there had been a robbery and they went across the street to get help. Ms. Yurtkuran stated that during the time of the robbery there were no other people present in the store (Tr. 66) which is in conflict with her statement in (Tr. 87) Ms. Yurtkuran stated "I believe there was three other customers, Yes". Why she keep changing up her story? Detective Logzino was contacted by the dispatch of the Pearl Police Department later on that morning of February 5, 2005 and was informed

that a robbery had occurred at the Exxon gas station at the corner of Old Brandon Road and Pearson Road in Pearl Mississippi. (Tr. 62)

Detective Logzino arrived at the scene of the crime and observed two patrol units who were securing the crime scene. (Tr. 62) While at the scene, Detective Logzino spoke with the clerk inside the store, Joanne Yurtkuran, and got a description of the individual who committed the robbery. (Tr. 63) He also viewed the recording of the events which were recorded by the store's video camera system. (Tr. 64) After viewing the tape, Detective Logzino contacted the Jackson Police Department and spoke with Detective Domino in an attempt to identify the person involved in the robbery. (Tr. 66) Detective Logzino was able to identify Gregory Jones as a possible suspect during his conversation with Detective Domino. (Tr. 66)

This statement is in conflict with defendant's arrest date. Defendant was arrested by the Jackson police Department on February 6, 2005, a day after the crime occurred. So how could Detective Logzino have obtained defendant's name from Detective Domino before an arrest occurred?

A photo lineup of Jones along with five other males with similar physical characteristics was compiled. (Tr. 67) This statement is also in conflict with arrest date. How can the Detectives obtain a photo lineup with the defendant photo in it and they do not know who they are looking for.

As a result of the identification, an arrest warrant was obtained for Gregory Jones. (Tr. 67) Early the next morning Det. Reginald Cooper and Det. Tommy Jones spotted a man matching the description of Jones at the Exxon on County Line Road and Ridge Wood Road. (Tr. 72) The Detectives first pulled into the BP parking lot in order to observe the suspect for

"a minute or so." (Tr. 72) When the Detectives approached the suspect in the Exxon parking lot, he took off running. (Tr. 72)

The Detectives followed the suspect around a fence to the rear parking lot of the Hilton Hotel. While he was running, Jones reached into his pocket two times discarded what appeared to be a weapon. (Tr. 73, 75) Jones was apprehended inside the Hilton Hotel wearing a shirt matching the description given by the store clerk. (Tr. 73)

This description of clothing is in conflict with clerk (victim) description of clothing given to Pearl Police by store clerk prior to arrest. (See Pearl Police incident form attached). After apprehending Jones, Detective Cooper²³ recovered a knife from the area where Jones had dropped the object. (Tr. 76) The knife was identified by Joanne Yurtkuran as the knife that was used in the robbery of the store. (Tr. 90-91) Note: Detective did not fingerprint the knife in order to prove said knife belong to defendant. (Tr. 69)

SUMMARY OF THE ARGUMENT

The defendant was denied Due Process of The Law by Detectives not having Probable Cause to arrest him. Detectives did not have a probable arrest warrant nor affidavit before or after said arrest.

ARGUMENT

ISSUE No. 1: WHETHER THE FRUITS OF THIS UNLAWFUL ARREST SHOULD HAVE BEEN SUPPRESSED?

Defendant was arrested February 6, 2005 by the Jackson Police, (Tr. 73) for the crime of armed robbery. But the Detectives did not have a probable affidavit nor arrest warrant.

Detective Logzino stated that victim (Ms. Yurtkuran) 100% identified Jones as her assailant (Tr. 67) but she did not file an affidavit against defendant, (see affidavit attached to appeal) and how could Detective Logzino bring any charges against defendant. Detective Logzino can't file an affidavit because he is not the victim of the robbery nor did he witness the robbery. He was called to the scene. (Tr. 63)

Detective Logzino obtained the arrest warrant the day of the crime, (Tr. 67) which was February 5, 2005. This date is in conflict with the date on the warrant, which read February 8, 2005 as being the date of issue, which is also in conflict with the date of service.

The date of service is a month before any robbery even occurred. Service date is January 8, 2005. Nor did the Pearl Municipal Court Judge sign the warrant. Who witness the filing of the warrant or affidavit? A bench warrant was filed on the 24th of February, of 2005, which was (18) eighteen days after my arrest. During which I was in the custody of Hinds County.

In Henry v. State, 486 So. 2d 1209, 1212 (Miss. 1986), this court said, "Probable cause" means less than evidence which would justify condemnation, but more than bare suspicion. After the defendant was arrested the store clerk still did not sign an affidavit against me and I am still charged with armed robbery which also violates my 4, 5, and 14 amend and article, 3, Sec. 23, 14 rights that is guaranteed under both U.S. and Mississippi Constitutions.

ISSUE No. II: WHETHER PROBABLE CAUSE EXISTED WHICH WARRANTED DEFENDANT'S ARREST ?

Defendant was arrested by the Jackson Police Department on February 6, 2005 (Tr. 73) without probable cause. According to Detective Logzino there was no physical evidence but a video tape. (Tr. 69) No finger prints, no weapon, no money; but a photo lineup was obtained with a photo of the defendant with five (5) other males. (Tr. 67) Note: Photo in lineup of defendant was taken eleven (11) years prior to the robbery) which makes defendant 22 years old at that time.

Detectives could have; from the video not been able to obtain a photo because it is not the defendant in said video nor do that person look like the defendant. How did the Detectives in Jackson come up with my name on the day of the robbery? How could the Detectives obtain a photo of me on the day of said robbery? (See EXHIBITS 3 and 5-4 of photos)

D.A. Guest stated that me (Jones) and the man in the video do not look the same. (Tr. 114) In Henry V. State, 486 So. 2d 1209, 1212 (Miss. 1986) the court said: to make an arrest for a felony with or without a warrant, a police officer must have reasonable cause to believe that the person proposed to be arrested is the one who committed it.. There was no reasonable cause to arrest defendant. Further this action violates defendant's 4, 5, and 14 amend., and article 3 Sec. 22, 23 and 14 Rights that are guaranteed under both U.S. and Mississippi Constitutions.

ISSUE No. III: WHETHER THE MOTION TO SUPPRESS SHOULD HAVE BEEN SUPPRESSED?

Trial court erred in not granting defendant's motion to suppress. Said motion was to not introduce the knife and shirt into evidence that was taken in an arrest in Jackson, which is Hinds County, on February 6, 2005. Jackson police officers recovered said evidence which the Rankin County District Attorney used in trial in Pearl. It was highly prejudicial to the defendant. Those items should have been barred under Rule 403 and 404(b) of the Mississippi Rules of Evidence.

Additionally, there was a photo lineup that was used at trial in Pearl (Tr. 67) that was provided by the Jackson Police Department. Said photo was a mug shot with a Jackson Police Department ID number under defendant's photo. Thus indicating to the jury that Jones has prior criminal cases in Jackson.

This action is more prejudicial than probative to the defendant under Rules 403 and 404(b) and as such should have been prohibited. The Evidence recovered by Jackson Police in any investigation handed over to Pearl is a clear violation of defendant's 4, 5, 6, and 14 amendment and article 3, sections 14, 23, and 26 Rights guaranteed under both U.S. and Mississippi Constitutions.

ISSUE No. IV: WAS THE PHOTO LINEUP SO SUGGESTIVE AS TO VIOLATE DUE PROCESS OF LAW?

The State photo lineup was so suggestive as to violate defendant's 5, 6, 8, and 14th amendments and article 3, Section 14, 22, 26 and 28 Rights

guaranteed under both U.S. and Mississippi Constitutions.

The photo with a Jackson Police Department I.D. number on it was highly prejudicial to defendant at trial indicating to the jury that I have a prior criminal history. No one but me was wearing a coat in the photos and that's what she was looking for, a man with a coat on.

Photo in the lineup of defendant was taken eleven (11) years prior to the robbery. The D.A. stated him self that Jones don't look the same 15 months after the robbery. (Tr. 113, 114) So that makes Ms. Yurtkuran in court identification impromissible as well as her photo indentification since said photo was eleven (11) years old.

There was not any kind of physical lineup or a pretrial identification of the defendant. Under York V. State, 413 So. 2d 1372, 1383 (Miss. 1982) Supreme Court discussed: a lineup or series of photographs in which the accused, when compared with others, is conspicuously singled out in some manner from the others, either from appearance (hence the Coat) or statements by an officer, is impremissibly suggestive. see Neil V. Biggers, 409 U.S. 188, 93 S. Ct. 377, 34 L. Ed. 2d 401 and Wilson V. State, 574, So. 2d 1324. Clothe description giving by Ms. Yurtkuran on the scene is in conflict with her in court description. (Police incident form attached) and (Tr. 87)

ISSUE No. V: SHOULD THE INDICTMENT HAVE BEEN QUASHED?

On November 30, 2005 defendant was indicted for the offense of armed robbery. Said robbery was alleged to have occurred on March 5, 2005. The defendant was incarcerated on February 6, 2005 in Hinds County and remained

incarcerated since. Defendant could not possibly have committed a robbery on date that was set forth in the indictment. On August 7, 2006 defendant filed a motion to dismiss said indictment through counsel. (Tr. 4-5) Said motion was denied.

On August 8, 2006 the state filed a motion to amend indictment in order to change the date (Tr. 4) that was set forth. Said motion was granted.

Under McGuire v. State, 35 Miss. 366, (1857 Miss) Supreme Court reversed the Circuit Court Judgement and quashed the indictment. McGuire pleaded, in abatement to the indictment that the Grand Jury which found the bill was illegally organized and that his name was Michael J. McGuire, and not Mitchell J. McGuire, as stated in the indictment, to the first ground of objection stated in the plea. The State moved the court to strike out the name of Mitchell and insert Michael in place of it therefore causing said reversal.

ISSUE No. VI: DID THE TRIAL COURT ERR IN ADMITTING THE KNIFE, SHIRT AND PHOTO LINEUP AS EVIDENCE?

Defendant filed a motion to suppress physical evidence obtained from him by officers of the Jackson Police Department (Note: No where on record did said motion get denied) So the State erred in using such evidence granted by the court clearly violates the Mississippi Rules of Evidence, Rule 403 and 404 (b) and it was highly prejudicial to the defendant for the state to have used such evidence, which also is a violation of defendant's 4, 5, and 14th amendments and article 3 sections 14, 23, and 26, 28, Rights guaranteed under both U.S. and Mississippi Constitutions.

Further, the court erred in allowing the state to use the photo lineup that was provided by the Jackson Police Department. Said photo would indicate a Jackson Police Department I.D. number under the photo of defendant, which is highly prejudicial and would indicate to the jury that Jones does have a prior criminal history in Jackson, Mississippi (see page 46 of the records) (to read note sent from the jury room).

Therefore any physical evidence used by the state during trial was more prejudicial than probative to the defendant under Rules 403 and 404(b) of the Miss. Rules of Evidence and as such should have been barred.

Also, the evidence recovered by the Jackson Police Department during any kind of Police investigating is a violation of defendant's 4, 5, 6, and 14th amendments and article 3 sections 14, 22, 23, and 26 Rights guaranteed under both U.S. and Mississippi Constitutions.

ISSUE No. VII: WHETHER THE TRIAL COURT ERRED IN NOT GRANTING DEFENDANT'S MOTION FOR A MISTRIAL?

Trial court erred by not granting defendant's motion for a mistrial when defendant counsel moved for the court to grant a mistrial during a dead lock in deliberation (Tr. 125) A note was received from the jury room (see page 46 in records) Note read in part: if he would have been charged with the carrying of a weapon by a felon, would that have been tried in the same trial?

How did they know defendant was a convicted felon? That statement from the jury room violates the uniform Circuit and County Court Rule 3.11 (that the jurors are not to form or express an opinion on the case or any subject connected with the trial).

Another note was not put in records, why? By the note saying that the jury is in a split decision the Judge asked the foreman, Mr. Arthur, "do you think further deliberation would prove fruitful? and he said that it will not. (Tr. 125) The formen said that "we're in a deadlock".

The court violated the Uniform Circuit and County Court Rule 3.10 by sending the jury home. (Tr. 125) and not granting a mistrial. Rule 3.10 in part says: "if a juror dissents in a criminal case or in a civil case if less than the required number can not agree, the court may: 1. return the jury for further deliberations or 2. declare a mistrial.

By sending the jurors home the court and jury violated Uniform Rule 3.11, the jurors are not to converse with anyone, including family members or another juror about the case.

ISSUE No. VIII: WHETHER TRIAL COURT ERRED IN NOT GRANTING JONES MOTION FOR A DIRECTED VERDIET?

The trial court committed reversible error in denying Jones' motion for a directed verdict because the victim misidentified him. Detective Logzino stated that the victim 100% identified Jones from a photo lineup (Tr. 68) Note: Photo in lineup was eleven (11) years old. Jones was 22 years old at the time in said photo.

D.A. Guest stated that "Mr. Jones don't look the same 15 months after the robbery. (Tr. 113-114) Now if Jones look different in 15 months prior to trial their is no way he would look the same 264 months prior to said robbery.

During cross-examination, the victim stated that she was very distraught when she wrote her statement to the Detective, said she had no feeling at the

time.(Tr. 96) If she was so distraught when writing that statement for the Detective, then she was distraught during said robbery and when she was viewing the photos.

There was no live lineup done nor a pre-trial lineup. During that time a live lineup was needed. In York V. State, 413 So.2d, 1372, 1989 Miss. using the Biggers factor, the Supreme Court looked at the 5-action by the witness/victim. So distraught falls under those factors.

They also looked at the prior description of the criminal. Her prior clothe description of the criminal is in conflict with her in court identification, (see attached exhibit 3, Police report and (Tr. 89) Also see Neil V. Biggers 409 U.S. 188, 199, 93 S. Ct. 375, 34 L Ed. 2d 401 (1972), Wilson V. State, 50. 2d 1324.

When a person is under so much pressure like she was during the time ain't no telling what she'll say or do. Look at all her prior misidentifications.(Tr. 97-98) So that would make her in court identification impermissibly. If she can not remember what her assailant was wearing during her distraught, How could she remember how he look?

If Jones was the assailant why did she not press charges? No where in records does it show an affidavit or arrest warrant (See records) if I am 100% sure that you are the one that robbed me, I will press charges.

Gregory Deon Jones respectfully asks this court to review the facts of this case with the guidance of the law that governs said facts, and to reverse the armed robbery conviction and vacate the armed robbery charge.

CONCLUSION

Jones is entitled by LAW to have his conviction reversed and the charge vacated.

Respectfully submitted

Gregory Deon Jones
GREGORY DEON JONES
PRO-SE

CERTIFICATE

I, Gregory Deon Jones, do hereby certify that I have this the 3 day of July, 2007, mailed a true and correct copy of the above and foregoing Brief Of Appellant to:

Hon. Samac S. Richardson
Circuit Court Judge
P.O. Box 1855
Brandon, Ms. 39043

Hon. David Clark
District Attorney
P.O. Box 68
Brandon, Ms. 39043

Hon. Jim Hood
Attorney General
P.O. Box 220
Jackson, Ms. 39205

Hon. Betty W. Sephton
Supreme Court Clerk
P.O. Box 249
Jackson, Ms. 39205 - 0249

All by U.S. Mail, First Class Postage Prepaid.

Gregory Jones
GREGORY DEON JONES

MSP # 76663
Unit 29 Building G
Parchman, Ms. 38738

WARRANT
STATE OF MISSISSIPPI
RANKIN COUNTY
PEARL MUNICIPAL COURT

Foot Note: Argue on Appeal
Not Filed in Court Service
Not on Court Records
Not Legal

Warrant No. : 2005020015

*2005020188

To Any Lawful Officer of RANKIN COUNTY:

This is to command you to forthwith to take the body of:

**GREGORY D
JONES**

Race/Sex: B / M DOB: 12/20/1971
1132 LANGLEY AVE
JACKSON, MS 392040000
Soc. Sec. No.: 427-33-3345
Incident No. 2005020188

and have him before the undersigned, a PEARL MUNICIPAL COURT Judge of said city to answer
to the STATE OF MISSISSIPPI on a charge of:

ROBBERY-ARMED

Section 97-3-79 MISSISSIPPI ANNOTATED CODE OF 1972

Bond Amount

Witness my hand this the 8 Day of February, 2005

AFFLIANT (S): DETECTIVE SAID WARRANT

WAS ISSUED 2-5-2005

NO JUDGE SIGNATURE

PEARL MUNICIPAL COURT JUDGE

WARRANT WAS SERVICE A MONTH BEFORE CRIME, NOT LEGAL

Warrant served this 8 Day of JAN 05 Time 0300 PM
Name of Officer Serving Warrant: [Signature]

After diligent search and inquiry the within named individual could not be found.

This the _____ Day of _____,
Signature: _____

OTHER DISPOSITIONS

Comments: _____

This the _____ Day of _____,
Signature: _____

EXHIBIT
#1

AFFIDAVIT. NOT LEGAL
FOOT NOTE: ARGUE ON APPEAL

GENERAL AFFIDAVIT
STATE OF MISSISSIPPI
RANKIN COUNTY
PEARL MUNICIPAL COURT

NO FILED IN COURT
SERVICE.

NOT ON RECORDS) NO AFFIDAVIT

Case No.: 2005020015

*2005020188

Personally appeared before me, Olivia Edwards, J.S., of the
RANKIN COUNTY PEARL MUNICIPAL COURT, MARC C LOGAZINO who makes oath on or
about the 5 day of February, 2005 within the corporate limits of said city and in the jurisdiction of the
Court. GREGORY D JONES was in violation of Section 97-3-79 of the MISSISSIPPI
ANNOTATED CODE OF 1972. (victim) Yurtkuran did not sign AFFIDAVIT.

Count: 1

did willfully, unlawfully and feloniously take \$248.00 cash from the Super Saver Exxon, in the presence of
Joanne Yurtkuran (clerk) against her will by threatening violence to this person by the use of a deadly weapon
and by putting her in fear of immediate injury by the exhibition of a knife.

This in the RANKIN COUNTY PEARL MUNICIPAL COURT in the State of MISSISSIPPI. Against the peace and dignity of the State of MISSISSIPPI
and contrary to the Ordinances of said city in such cases made and provided, and in the good order and peace thereof.

ARGUE ON APPEAL

DETECTIVE LOGAZINO CAN'T SIGN
AFFIDAVIT, PERJURY CHARGE
UNDER M.A.C. 97-9-59

Marc Logazino
Affiant

Sworn and subscribed before me on this 5 Day of February 2005

AND M.R.E. RULE, 603-OATH
OR AFFIANT, AND M.R.C.P. (43-(d))
Signed James M. [Signature]

Name

Defendant

Address

GREGORY D JONES
B / M DOB: 12/20/1971
Soc. Sec. No.: 427-33-3345

1132 LANGLEY AVE
JACKSON MS
392040000

EXHIBIT
#2

**PEARL POLICE DEPARTMENT
INCIDENT NUMBER: 2005020188**

DATE: 02/07/2005

Page 3

Agency: PPD

Author: ARANT, PHILIP D

Incident No: 2005020188

Title: OFFICER'S REPORT

Report Type: I

I OFFICER ARANT RESPONDED TO 101 PEARSON RD. IN REF. TO AN ARMED ROBBERY. UPON GETTING THE CALL MYSELF AND OTHER OFFICER'S CANVASED THE AREA IN AN ATTEMPT TO LOCATE THE SUSPECT. WE WERE UNABLE TO LOCATE THE SUSPECT AT THIS TIME. I THEN RESPONDED TO USA PAWN WHERE THE CLERK WHOM HAD BEEN ROBBED HAD RUN TO. SHE STATED TO THIS OFFICER THAT AN UNKNOWN B/M SUBJ. CAME INTO THE STORE AND PURCHASED A CUP OF COFFEE. SHE STATED ABOUT 15 MINUTES LATER HE CAME BACK INTO THE STORE WHERE HE THEN PULLED A KNIFE AND ADVISED THE CLERK TO OPEN THE REGISTER. THE SUSPECT THEN WENT BEHIND THE REGISTER WHERE HE ONLY GOT THE \$10 BILLS AND \$20 BILLS. THE SUSPECT THEN EXITED THE STORE ON THE SOUTH SIDE BY BUMPERS. THE CLERK IDENTIFIED THE SUSPECT AS A B/M ABOUT 6 FEET 2 INCHES TALL WEARING A GREEN FLEECE AND PAJAMA STYLE PANTS. THE CLERK STATED HE MADE OFF WITH \$248.00 IN US CURRENCY. AT THIS TIME CID ON CALL WAS NOTIFIED AND RESPONDED TO THE SCENE.

UPON DET. LOGAZINO RESPONDING THE SCENE WAS TURNED OVER TO HIM. DET. LOGAZINO LATER IN THE DAY WAS ABLE TO IDENTIFY A SUSPECT THROUGH COOPERATION WITH THE JACKSON POLICE DEPT. THE SUSPECT IN THIS CASE GREGORY JONES B/M HAS BEEN ARRESTED BY JPD AND PLACED IN THE HINDS COUNTY JAIL. JPD HAS NUMEROUS COUNTS OF ARMED ROBBERY ON THE SUSPECT. SEE DET. LOGAZINO'S REPORT FOR MORE INFORMATION. END OF REPORT.

EXHIBIT
#3