

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

DOCKET NO. 2007-KA-00072-SCT

CHRISTOPHER ARCHER

APPELLANT


V.

STATE OF MISSISSIPPI



APPELLEE

I. CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the Court of Appeals may evaluate possible disqualifications or recusal.

- | | | |
|----|----------------------|-------------------|
| 1. | Christopher Archer | Appellant |
| 2. | Kelsey L. Rushing | Appellant Counsel |
| 3. | State of Mississippi | Appellee |
| 4. | Jim Hood | Appellee Counsel |
| 5. | Hon. Jannie Lewis | Trial Judge |

CERTIFIED this the 14th say of September, 2007.


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II.

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CERTIFICATE OF SERVICE

IV.

ISSUES PRESENTED

- I. WHETHER DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL?**
- II. WHETHER DEFENDANT WAS DENIED A RIGHT TO A TRIAL BY A FAIR AND IMPARTIAL JURY?**

V.

STATEMENT OF THE CASE

A. NATURE OF THE CASE

This is an appeal from a conviction by jury of Mr. Christopher Archer in the Circuit Court of Holmes County, Mississippi, on February 20, 2004. Mr. Archer was convicted of armed robbery.

B. PROCEEDINGS BELOW

Christopher Archer was indicted for armed robbery on December 12, 2002. [CP 5]. Christopher Archer was tried the first time for armed robbery on October 8, 2003. That trial ended in a mistrial when all 12 jurors could not agree.[CP 58]. He was tried again on February 20, 2004, and found guilty.[Trans. Page 209]. He was sentenced on March 1, 2004, to eight years with the Mississippi Department of Corrections. [CP. 105]. A motion for new trial was filed on March 1, 2004. That motion was denied. [CP. 152]. Sometime after the trial, the transcripts disappeared. Defendant file Motions for Extensions of Time to File Appeal, or in the Alternative a New Trial. [CP. 153-156]. The transcripts were finally located. [CP. 160].

Archer appeals from the jury verdict and the denial of the new trial.

VI.

SUMMARY OF THE ARGUMENT

The Defendant was not given his Constitutional right to the effective assistance of

counsel. The Defendant's counsel made a number of errors that but for those errors, the verdict would have been different. Counsel did not move for an acquittal after the end of the State's case, nor did he ask for the directed verdict of acquittal after the defense rested. Also, counsel allowed testimony of a bad act which prejudiced the jury. Finally, counsel did not use a challenge to strike Juror No. 21, after it was discovered in voir dire that she knew the victim personally and was a victim of an armed robbery.

The Defendant was not given a trial in front of a fair and impartial jury. Jurors number 11 and 21 both knew the victim personally, and were victims of robberies. They were biased and should have been stricken from the jury.

VII.

ARGUMENT

I. WHETHER DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL?

This Court “review[s] claims of ineffective assistance of counsel under the familiar *Strickland* test: A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction ... First, the defendant must show that counsel's performance was deficient. ...Second, the defendant must show that the deficient performance prejudiced the defense.” *Powell v. State*, 806 So.2d 1069, 1076 (Miss. 2001).

A. WHETHER THERE WAS INEFFECTIVENESS OF COUNSEL BY NOT MOVING FOR AN ACQUITTAL AFTER THE PROSECUTION RESTED?

During the trial, at the close of the State’s case, counsel for the Defendant did not move for an acquittal of the charges. The Motion for acquittal is essentially challenging the sufficiency of the States evidence. Therefore, the defense never questioned the validity of the States evidence. The Defense counsel’s failure to ask for an acquittal was ineffective assistance of counsel.

B. WHETHER THERE WAS INEFFECTIVENESS OF COUNSEL BY NOT ASKING FOR AN ACQUITTAL AFTER THE DEFENSE RESTED?

During the trial, at the close of the State’s case, counsel for the Defendant did not

move for an acquittal of the charges. The Motion for acquittal is essentially challenging the sufficiency of the States evidence. Therefore, the defense never questioned the validity of the States evidence. The Defense counsel's failure to ask for an acquittal was ineffective assistance of counsel. As a result the Defendant was prejudiced.

C. WHETHER IT WAS INEFFECTIVENESS OF COUNSEL BY NOT MOVING FOR THE SUPPRESSION OF THE ALLEGED WEAPON?

At trial, the Defense counsel elicited testimony from a defense witness Christopher Jordan, regarding the alleged weapon used to commit the robbery. *Trans. Page 180-184*. The testimony was essentially that Archer took the gun from another individual a few days after commission of the robbery. However, Archer had a pending charge regarding that very weapon. This testimony should not have been allowed as it allowed the jury to consider other possible crimes for which Archer had not been convicted.

This was overly prejudicial to the Defendant. But for the ineffectiveness of counsel, this information would not have come out at trial. It is highly probable that the jury would have reached a different verdict.

D. WHETHER IT WAS INEFFECTIVENESS OF COUNSEL TO NOT USE A PREEMPTORY CHALLENGE ON JUROR NUMBER 21.

As will be discussed later in this brief, Juror No. 21, Blanche Watson was allowed to remain on the jury panel. *See Trans. Page 55*. She stated that she knew the victim. She also stated that she had been a victim of armed robbery. This juror was not challenged for cause. Furthermore, counsel did not use a preemptory strike against her. Clearly, she should have

been stricken. However, counsel never challenged her or attempted to strike her. Because of this the Defendant was prejudiced.

II. WHETHER DEFENDANT WAS DENIED A RIGHT TO A TRIAL BY A FAIR AND IMPARTIAL JURY?

During voir dire, juror number 11, Carolyn Powell, and juror number 21, Blanche Watson, stated that they had both been victims of a robbery and that they both knew the victim.

Carolyn Powell said that:

Q. Okay. Ms. Powell, you stated earlier that you know Winston. How do you know Winston? And be more specific than just general. I mean, are you just friends with the family, or do you know him personally?

A. Friends with the family, and I just know him personally.

Trans. Page 40, Line 4-10.

Blanche Watson stated that she had been a victim of armed robbery. *Trans. Page 37, Line 23-29.* Later in voir dire, Defense counsel asked:

Q. Ms. Watson, friend of the victim. Do you know him personally or just generally?

A. (Blanche Watson) Personally. He's been at my house before.
Trans. Page 41, Line 17-20.

Later, in the Judge's chambers, Defense asked that Juror 11 be stricken for cause.

MR. GATES: On No. 11, knows Winston, and she'd been robbed before. Said she thinks she can be impartial, but I don't think she can. I mean, she knows if Winston, she's been robbed before, goes (indiscernible) case.

THE COURT: Cause denied on Powell. She said she can be fair and impartial. *Trans. Page 48, Line 27-29, Page 49, Line 1-5.*

As to the standard of review regarding jury selection, one of the oldest and most fundamental principles of law is that every defendant is entitled to a fair trial by an impartial jury. *Collins v. State*, 99 Miss. 47, 50, 54 So. 665, 665 (1911). This Court may not reverse the trial judge's decisions regarding jury selection unless there is an abuse of discretion. *Pierre v. State*, 607 So.2d 43 (Miss.1992). "The right to a fair trial by an impartial jury is fundamental and essential to our form of government. It is a right guaranteed by both the federal and state constitutions." *Simon v. State*, 688 So.2d 791, 803 (Miss.1997) (quoting *Johnson v. State*, 476 So.2d 1195, 1209 (Miss.1985)). A person is competent to be a juror if the juror has no interest, bias or prejudice in the prosecution, and the juror has no desire to reach a result other than that gained from the evidence and the law in the case. *Johnson*, 666 So.2d at 794 (quoting *Simmons v. State*, 241 Miss. 481, 489, 130 So.2d 860, 863 (1961)).

Reed v. State, 764 So.2d 496 (MissApp.2000).

A juror removed on a causal challenge is one against whom a cause for challenge exists such that the juror's impartiality at trial is likely affected. See *Doss v. State*, 709 So.2d 369, 385 (Miss.1997). Indeed, the trial judge has discretion to excuse potential jurors for cause if the court believes the juror is unable to try the case impartially. ... This Court is required to reverse the trial court when this Court clearly is of the opinion that a juror was not competent. *Dennis v. State*, 91 Miss. 221, 229, 44 So. 825, 826 (1907). Indeed, this Court stated: The right to a trial by an impartial jury, when being prosecuted for crime, is secured by section 26, art. 3, of the Constitution. No more sacred duty can devolve on any court than the duty of seeing to it that this provision of the Constitution receive a strict enforcement.

Fleming v. State, 732 So.2d 172, 180-181 (Miss. 1999).

On substantive grounds, statutory and case law empowered the judge with broad discretion to determine whether a prospective juror can be impartial-notwithstanding the juror's admission under oath that he or she can be impartial. See *Burt v. State*, 493 So.2d 1325, 1327 (Miss.1986) ("It is well founded that the trial judge has the discretion to excuse potential jurors for cause if the court believes the juror could not try the case impartially.") (citing

cases); Miss.Code Ann. § 13-5-79 (1972).

Coverson v. State, 617 So.2d 642, 646. (Miss. 1993).

In denying the Defense's causal strike of Juror no. 11, Carolyn Powell, the trial court abused its discretion, and Archer was denied a trial by a fair and impartial jury. It is clear that because Powell knew the victim and had herself been a victim of a violent crime, she could not have been impartial, notwithstanding her statement that she could. For that reason, Archer should be given a new trial.

V.

CONCLUSION


The conviction of Christopher Archer should be reversed. The Defendant was denied his Constitutional right to effective assistance of counsel. Because of the numerous errors by defense counsel, Mr. Archer was severely prejudiced, such that a reversal of his conviction is warranted.

The lower court abused its discretion in denying defenses challenge for cause of Juror No. 11. Because she knew the Defendant and had been a victim of armed robbery, she was clearly could not be fair and impartial.

The Defendant was not given a trial before a fair and impartial jury. Jurors No. 11 and 21 should not have been empaneled. They both knew the defendant, and were both victims of armed robbery. Despite their declarations to the contrary, they could not have been fair and impartial.

For the above reasons, Christopher Archer pray this Court reverse his conviction of armed robbery.

Respectfully submitted,
Christopher Archer
Appellant



By: Kelsey L. Rushing
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CERTIFICATE OF SERVICE

This is to certify that I, Kelsey L. Rushing, Attorney for Appellant, have this date served a true and correct copy of the above and foregoing Brief for Appellant, by United States Postal Service, first class postage prepaid, to the Honorable Jim Hood, Attorney General, P.O. Box 220, Jackson, MS 39205.

This the 14th day of September, 2007.

A handwritten signature in black ink, appearing to read 'K. Rushing', is written over a horizontal line.

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