IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JOE SOLOMON PRUITT — APPELLANT

VS. — NO. 2007-KA-0499-SCT

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

BY: LA DONNA C. HOLLAND
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [redacted]

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JOE SOLOMON PRUITT **APPELLANT**

VS. **NO. 2007-KA-0499-SCT**

STATE OF MISSISSIPPI **APPELLEE**

BRIEF FOR THE APPELLEE

STATEMENT OF THE ISSUE

I. THE TRIAL COURT CORRECTLY ACCEPTED THE STATE'S RACE NEUTRAL REASONS FOR STRIKING JURORS 1, 2, AND 14.

STATEMENT OF FACTS

On March 14, 2006, Joe Pruitt, James Person, and Alonzo Jones drove from Memphis, Tennessee to Smithville, Mississippi to rob the Renasant Bank. T. 341. They arrived at the bank at approximately 11:00 a.m, but left because too many customers were in and around the bank. T. 343. They returned to the bank about an hour later, and Jones stayed in the car to play getaway driver. T. 347. Pruitt and Person went in to rob the bank. T. 348, 418-19. Pruitt had one of the guns and Jones kept one in the car. T. 348. After robbery, they fled toward Memphis, and an ink pack exploded in bag. 349-50. Persons threw the bag out of the car. T. 423. After seeing a couple of law enforcement vehicles, they exited the main road, ditched the car, and ran into the woods. T. 350-51. Not knowing where they were, the trio wandered around the woods lost all night until coming upon some houses. T. 351-52. They spent the night in a shed and then stole a woman's

vehicle to flee to Memphis. T. 352, 426. Before making it off the woman's property, they got the car stuck in a ditch. T. 352. Someone then called for help to pull the car out. T. 352. While waiting for someone to come pull the car out of the ditch, law enforcement arrived and arrested the amateur bank robbers. T. 353.T. 426-27.

SUMMARY OF ARGUMENT

Pruitt failed to establish a *prima facie* case showing purposeful discrimination. Nevertheless, the State articulated race neutral reasons for its peremptory strikes. Pruitt then failed to show that the State's reasons were pretextual. Because the trial court's *Batson* ruling was not clearly erroneous or against the overwhelming weight of the evidence, Pruitt's argument must fail on appeal.

ARGUMENT

I. THE TRIAL COURT CORRECTLY ACCEPTED THE STATE'S RACE NEUTRAL REASONS FOR STRIKING JURORS 1, 2, AND 14.

Defense counsel raised a *Batson* objection and asked the trial court to direct the State to provide race neutral reasons for striking jurors 1, 2, and 13. T. 79. The prosecutor stated that he had stricken Chiquita Griffin, juror 1, because she had a short-term employment history, lived in a high crime area, was a single mother, and had relatives who had been criminally prosecuted. T. 80-81. Tracy Lagone, juror 2, was stricken because one of her relatives had been recently prosecuted by the Monroe County District Attorney's Office. T. 81. Mary Louise McMillan, juror 14, was stricken because at least two of her relatives had been prosecuted and she had a short-term employment history. T. 80. Defense counsel claimed that the reasons offered by the State were pretexts for purposeful discrimination. T. 82. The prosecutor countered that in any case he would strike a juror of any race if they were related to someone who had been recently prosecuted or lived in a high crime area. T. 85. The trial court found that no pattern of purposeful discrimination had been

established to even require the State to offer race neutral reasons, but that in any event, the State had given acceptable race neutral reasons for the strikes. T. 86.

Relying on *Snow v. State*, 800 So. 2d 472 (Miss. 2001), Pruitt claims that because the prosecutor offered race neutral reasons for the strikes before the trial court determined whether defense counsel made out a *prima facie* showing of a *Batson* violation, the requirement that the court make such a ruling was moot. However, in *Snow*, the trial court never ruled on whether Snow had established a *prima facie* case. *Id.* at 478-79 (¶11). In the case *sub judice*, the trial court did in fact rule that Pruitt had not established a *prima facie* case. T. 86.

A trial court's determination that the defendant failed to establish a *prima facie* case of purposeful discrimination will not be disturbed unless the finding is clearly erroneous or against the overwhelming weight of the evidence. *Chandler v. State*, No. 2004-KP-00506-COA (¶23) (Miss. Ct. App. Oct. 24, 2006). To establish a *prima facie* case, the party lodging the *Batson* challenge must show "(1) that he is a member of cognizable racial group; (2) that the prosecutor has exercised peremptory challenges to remove from the venire members of the defendant's race; (3) and the facts and circumstances raised an inference that the prosecutor used his peremptory challenges for the purpose of striking minorities." *Flowers v. State*, 947 So.2d 910, 917 (¶9) (Miss. 2007) (citing *Snow v. State*, 800 So.2d 472, 478 (Miss. 2001)). Quoting the Fifth Circuit Court of Appeals, the Mississippi Court of Appeals recently stated the following.

> A *prima facie* case of racial discrimination requires a defendant to come forward with facts, not just numbers alone. In this circuit, a trial court's determination that a party has failed to make a *prima facie* showing is accorded a presumption of correctness, which can only be rebutted by clear and convincing evidence.

Chandler at (¶22) (quoting *Brown v. Kinney Shoe Corp.*, 237 F.3d 556, 561 (5th Cir. 2001)). In the case *sub judice*, defense counsel did no more than point out that the State exercised three peremptory

strikes against African American jurors, and then asked the court to require to the State to give race neutral reasons. T. 79. Although the State volunteered race neutral reasons for the strikes, the trial court ultimately found that Pruitt failed to present a *prima facie* case, and that the State had not been required to offer race neutral reasons for the strikes. T. 86. Because the trial court's ruling that Pruitt failed to establish a *prima facie* case was not clearly erroneous or against the overwhelming weight of the evidence, the inquiry should end here. However, out of an abundance of caution, the State will also show that the prosecutor's race neutral reasons for the strikes were not pretextual.

The primary reason given by the prosecutor for striking jurors 1, 2, and 14 was that each of them had relatives who had been recently prosecuted by his office. T. 80-81. The prosecutor gave additional reasons for striking juror 1, including the fact that she lived in a high-crime area, was a single mother, and had a short-term employment history. T. 80-81. Juror 14's short-term employment history was also a secondary reason that she was stricken. T. 80.

"As long as discriminatory intent is not inherent in the explanation given by the prosecution, 'the reason offered will be deemed race neutral.'" *Flowers v. State*, 947 So.2d 910, 917 (¶9) (Miss. 2007) (quoting *Randall v. State*, 716 So.2d 584, 588 (Miss. 1998)). This Court has previously held that being a single parent, having short-term employment, and having family members with criminal histories are sufficient race neutral reasons to exercise peremptory strikes. *Magee v. State*, 720 So.2d 186, 188-89 (Miss. 1998) (citing *Lockett v. State*, 517 So.2d 1346, 1356-57 (Miss.1987)). This Court has also found that living in a high crime area is a race neutral reason to exercise a peremptory strike. *Lynch v. State*, 877 So.2d 1254, 1271- 72 (¶51) (Miss. 2004) (citing *Lockett v. State*, 517 So.2d 1346, 1356-57 (Miss.1987)).

After race neutral reasons have been articulated, the trial court must then decide if the objecting party has met its burden in proving that the reasons given were pretexts for discrimination.

Flowers at 917 (¶9) (citing *McFarland v. State*, 707 So.2d 166, 171 (¶14) (Miss. 1997)). In an attempt to show that the State's race neutral reasons were pretextual, defense counsel argued that living in a high crime area is a group-based trait and that the State's information regarding the stricken jurors having relatives who had been recently prosecuted lacked record support. T. 83. As to defense counsel's first contention, and as previously stated, this Court has previously held that living in a high crime area is a valid race neutral reason to exercise a peremptory strike. *Lynch* at 1271-72 (¶51). As to defense counsel's second contention, this Court has held, "[T]he basis for the prosecutor's strike need not be in the record." *Manning v. State*, 765 So.2d 516, 520 (¶10) (Miss. 2000) (citing *Thorson v. State*, 721 So.2d 590, 597-98 (¶23) (Miss. 1998). In *Thorson*, the prosecutor relied on information from a sheriff's deputy that a potential juror "had some family members who had had entanglements with the law." *Id.* at 597 (¶20). The Court noted that having a family member with a criminal history was a valid race neutral reason, and that the Court had never limited the means by which a prosecutor could obtain information about potential jurors. *Id.* at (¶¶22-23) (citing *Lockett* at 1351; *Collins v. State*, 691 So.2d 918, 927 n4 (Miss. 1997)). The Court ultimately held, "Thus, if a prosecutor in good faith offers a race-neutral reason supplied to him by a third person, then that reason should overcome a *Batson* challenge." *Id.* In the case *sub judice*, the prosecutor similarly relied on information from present law enforcement officers that the three stricken jurors all had family members who had been recently prosecuted. T. 80-81. In accordance with *Thorson* and *Manning*, defense counsel's second contention failed to show that the State's race neutral reason was pretextual.

The trial court's *Batson* ruling must be affirmed as it was not clearly erroneous or against the overwhelming weight of the evidence. *Manning* at 519 (¶8).

CONCLUSION

For the foregoing reasons, the State asks this honorable Court to affirm Pruitt's conviction and sentence.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: LaDonna C. Holland

LA DONNA C. HOLLAND
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [redacted]

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680

CERTIFICATE OF SERVICE

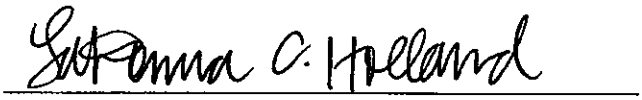
I, La Donna C. Holland, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Paul S. Funderburk
Circuit Court Judge
Post Office Drawer 1100
Tupelo, MS 38802-1100

Honorable John R. Young
District Attorney
Post Office Box 212
Corinth, MS 38834

Benjamin A. Suber, Esquire
Attorney At Large
301 North Lamar St., Ste. 210
Jackson, MS 39201

This the 21st day of September, 2007.



LA DONNA C. HOLLAND
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MISSISSIPPI 39205-0220
TELEPHONE: (601) 359-3680