IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JOE SOLOMON PRUITT — APPELLANT

V. — NO. 2007-KA-0499-SCT

STATE OF MISSISSIPPI — APPELLEE

BRIEF OF THE APPELLANT

ORAL ARGUMENT NOT REQUESTED

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JOE SOLOMON PRUITT **APPELLANT**

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

STATE OF MISSISSIPPI **APPELLEE**

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 this court may evaluate possible disqualifications or recusal.

1. State of Mississippi
2. Joe Solomon Pruitt, Appellant
3. Honorable John R. Young, District Attorney
4. Honorable Paul S. Funderburk, Circuit Court Judge

This the 27 day of August, 2007.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY: Benjamin A. Suber

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STATEMENT OF THE ISSUE

THE TRIAL COURT ERRED IN ACCEPTING THE RACE NEUTRAL REASONS GIVEN BY THE STATE AFTER A BATSON OBJECTION REGARDING JUROR NO. 1, JUROR NO. 2, AND JUROR NO. 14.

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Monroe County, Mississippi, and a judgment of conviction for the crime of armed robbery. Pruitt was sentenced to thirty-five (35) years in the custody of the Department of Corrections following a jury trial on February 28 - March 2, 2007, Honorable Paul S. Funderburk, presiding. Joe Solomon Pruitt is presently incarcerated with the Mississippi Department of Corrections.

FACTS

On March 14, 2006, the Renasant Bank in Smithville was robbed. Alonzo Jones [hereinafter Jones] and James Person [hereinafter Person] testified that they robbed the bank along with the alleged help of Joe Pruitt [hereinafter Pruitt]. [T. 347-48, 415].

According to the testimony of Jones, he had worked for Loomis Fargo. [T. 338]. His job was to drive trucks and service banks, which included the Renasant Bank in Smithville. *Id.* Jones was fired from Loomis Fargo and thought that the Renasant Bank in Smithville would be an easy bank to rob because it was just two old women in the bank. [T. 339-40]. Jones admitted to being the mastermind behind the bank robbery because he knew the area, knew when the Loomis truck was going to the bank, and knew the layout and details about the bank. [T. 340-41].

The morning of the robbery, the men left Memphis, Tennessee, and headed down to Smithville, Mississippi. [T.343, 415]. Around noon, the men pulled up to the Renasant Bank and two men got out and went into the bank. [T. 181, 347-48]. One guy jumped over the teller counter and took Phyllis Morgan to the vault, and the other guy went to the teller

window and was telling the teller Emily Beck to put all the money into the sack. [T.120, 182]. The two men ran out of the bank after gathering the money and jumped into their car in the parking lot. [T. 186, 349]. As the men were leaving the bank in the car, a dye pack that was placed in one of the bags exploded and starting filling the car with smoke and they tossed the bag out the window. [T. 349, 423].

Jones testified that as they were trying to head back to Memphis, they were sitting at a four-way stop and an officer in a police car started looking at the car. [T. 239, 350]. The men got onto Highway 78 and the officer turned around to follow them. *Id.* The men then continued to drive down Highway 78 and got off onto the first exit they came upon. [T. 350]. The men then came upon a dead end at the Peppertown boat ramp. [T. 351]. Whereupon, the officer pulled up to the boat ramp and found the car abandoned. [T. 243]. The men had jumped out of the car and ran into the woods. *Id.* They were in the woods most of the night, but eventually came upon some little shed beside someone's house that they slept in for a hours. [T. 352, 425].

At some point the next morning they had tried to leave in a car, but the car got stuck in a ditch. [T. 352, 426]. They were in a lady's house and her son came to pull the car out of the ditch. [T. 352]. Officer Steven Keith Wilburn was driving around looking for the suspects that had robbed the bank and noticed a car in the ditch. [T. 260]. As he was inquiring about the car, he learned from Robert Guin, who was getting the car out of the ditch, that the robbers were located inside the house. [T. 260].

Officer Wilburn drove off and called the sheriff then notified the Lee County sheriff's

department. [T. 260]. He was then notified by the Federal Bureau of Investigation. *Id.* Law enforcement officers surrounded the house and the potential suspects surrendered. [T. 261, 353, 426]. The men that were arrested were Jones, Person, and Pruitt. [T. 261].

The occupants of the house notified Officer Wilburn that night, they found a large amount of money at the house within the furniture. [T.262]. Jones stated that they cut a hole in the back of the furniture and they stuffed the money inside. [T. 354].

Both Jones and Person plead guilty to armed robbery and were testifying for the prosecution against Pruitt. [T. 366, 432].

SUMMARY OF THE ARGUMENT

The trial court improperly accepted the race neural reasons offered by the prosecution. The prosecution struck three African-American jurors which was a ***Batson*** violation because the strikes were pre-textual. The explanations of the prosecutor showed disparate treatment in that the jurors were struck because they were possibly related to someone who had been previously prosecuted, lived in a high crime area, or a juror card was incomplete. Prosecutors nor defense counsel should be allowed to manipulate ***Batson*** to the point where voir dire is simply an exercise in finding race neutral reasons to strike a juror. "Serving on a jury is a right, privilege and responsibility of all our citizens." ***Thorson v. State***, 721 So.2d 590, 594 (Miss. 1998); ***Article 3, Section 18 of the Mississippi Constitution***.

ARGUMENT

ISSUE I: THE TRIAL COURT ERRED IN ACCEPTING THE RACE NEUTRAL REASONS GIVEN BY THE STATE AFTER A BATSON OBJECTION REGARDING JUROR NO. 1, JUROR NO. 2, AND JUROR NO. 14.

Pruitt objected to the twelve (12) jurors that the prosecution tendered under ***Batson***. ***Batson***

v. Kentucky, 476 U.S. 79 (1986). [T. 79]. The State used peremptory challenges on three (3) African-American jurors. *Id.* The State struck Juror No. 1, No. 2., and No. 14 and Pruitt objected because the pattern of exclusion was based on cognizable racial classification. *Id.* The State claims that it offered race-neutral reasons for its challenges, that they offered four (4) African-Americans to the defense, and that the defendant must show that the prosecutors used peremptory challenges on a person of race and that the circumstances give rise to an inference that the prosecutor used the peremptory challenges in order to strike minorities. [T.79-80].

"In reviewing a claim for a ***Batson*** violation, [this Court] 'will not overrule a trial court on a ***Batson*** ruling unless the record indicates that a ruling was clearly erroneous or against the overwhelming weight of the evidence.'" ***Flowers v. State***, 947 So.2d 910, 917 (Miss. 2007) (citing ***Thorson v. State***, 721 So.2d 590, 593 (Miss. 1998)).

"In lodging a ***Batson*** claim, the party who objects to the peremptory strike 'must first make a prima facie showing that race was the criteria for the exercise of the peremptory strike.'" ***Flowers***, 947 So.2d at 917 (citing ***McFarland v. State***, 707 So.2d 166, 171 (Miss. 1997)). *See* ***Batson***, 476 U.S. at 96-97. A defendant can establish a prima facie case of discrimination by showing:

> (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.

Snow v. State, 800 So.2d 472, 478 (Miss. 2001). "Once a prima facie case has been established, the party exercising the challenge has the burden to articulate a race-neutral explanation for excluding that potential juror." ***Flowers***, 947 So.2d at 917. *See* ***McFarland***, 707 So.2d at 171. "As long as discriminatory intent is not inherent in the explanation given by the prosecution, 'the reason offered will be deemed race neutral.'" ***Flowers***, 947 So.2d at 917 (citing ***Randall v. State***, 716 So.2d 584,

588 (Miss. 1998)). "After a race-neutral explanation has been given, 'the trial court must determine whether the objecting party has met its burden to prove that there has been purposeful discrimination in the exercise of the peremptory,'" in other words, the reason given was a pretext for discrimination. ***Flowers***, 947 So.2d at 917 (citing ***McFarland***, 707 So.2d at 171).

This Court has identified five (5) indicia of pretext when examining race-neutral explanations of a peremptory strike:

> (1) disparate treatment, that is, the presence of unchallenged jurors of the opposite race who share the characteristic given as the basis for the challenge; (2) the failure to voir dire as to the characteristic cited; ... (3) the characteristic cited is unrelated to the facts of the case; (4) lack of record support for the stated reason; and (5) group-based traits.

Manning v. State, 765 So.2d 516, 519 (Miss. 2000). *See* ***Mack v. State***, 650 So.2d 1289, 1298 (Miss. 1994). "The burden remains on the opponent of the strike to show that the race-neutral explanation given is merely a pretext for racial discrimination." ***Flowers***, 947 So.2d at 917. *See* ***Berry v. State***, 802 So.2d 1033, 1042 (Miss. 2001).

During the jury selection in the case at bar, a *prima facie* case was established, as three (3) of the State's possible six (6) strikes were against African American jurors. Regardless, the prosecution did not wait for the court to make a ruling whether a prima facie case was established, but proceeded to state race neutral reasons into the record. Therefore, the requirement for the trial to a find a prima facie case was moot. ***Snow v. State***, 800 So.2d 472 (Miss. 2001), *see* ***Hernandez v. New York***, 500 U.S. 352, 359 (1991). The prosecution listed numerous race-neutral reasons why each of the three (3) jurors were excluded.

> MR. HELMERT: . . . I would ask that the Court find the pattern of exclusion and require the State to give race-neutral reasons for that exclusion.
> **THE COURT**: Mr. Joyner
> MR. JOYNER: . . . the defendant must show that prosecutors used peremptory challenges on a person of race and that the circumstances give rise to an inference that the prosecutor used the peremptory challenges in order to strike minorities.
> One little fact left out by counsel opposite was the fact that - - the State did

> indeed strike three African-Americans. The State likewise tendered, by my count, four African-Americans, and Ms. Mary Louise McMillian, had no idea what race she was when I called Officer Quinell Shumpert just to inquire if he knew her, and he expressed concern. She has short-term employment - - I'm sorry. I'm starting at No. 14, Your Honor, who I had no notation as to whether she was black or white. She has short-term employment, coupled with a concern by Officer Quinell Shumpert that she is related to . . . and I don't know that I brought the names in here . . . two different McMillians that we had prosecuted. Going up to - - I'm sorry - - I'll take them in order, Your Honor. Chiquita Griffin. That's S-1, Juror No. 1. Chiquita Griffin has, looking at her jury form . . . she has short-term employment, which is a factor supported by case law as a race-neutral factor. She lives in an incredibly high crime area, Valley Chapel Road, known by law enforcement to be problematic. She is likewise a single mother. All three of those are different factors that the case law supports as being race-neutral, but - - and those are just - - causes for even more concern, but, quite frankly, one of the officers - - we have a number of police officers in the room, and one of them expressed concern to me that Rob Coleman, who was here before me and then during some of my tenure here, had prosecuted a relative of hers. And all those factors taken together, there is no way we would want her on the jury.
>
> Tracy Lagrone, once again, one of the law enforcement officers expressed concern that she is related to one of our supervisors here whose son we have prosecuted in the very recent past. And likewise, in looking at her form, it is essentially incomplete. I had no idea about her term or length of employment, because that is left blank. In any event, the reason that we made that strike was because of concern that she was related to the supervisor whose son we had prosecuted.
>
> No. 14 I have actually already dealt with, but she has very short-term employment, coupled with our concerns via Officer Shumpert, that she is related to persons that have been prosecuted.

[T. 79 - 81].

Regarding the jurors, after the State gave its reasons, the defense pointed out several indicia of pretext when examining race-neutral explanations of a peremptory strike. Not one single justification that was raised by counsel for the State was questioned to the jury panel at voir dire, and because there were no questions there is a lack of the record. Two (2) of the five (5) indicia list above are the failure to voir dire as to the characteristic cited and lack of record support for the stated reason. It is not known whether the State examined other potential jurors of a different race for their relationship to any particular defendant that has been prosecuted in the past. That

type of information is obviously available to the State. The State should have asked these questions to potential jurors directly, instead of just raising an inference, because they have the same last name, or because they look the same, or that they might be related.

All of three (3) of the African-American jurors that were struck, the State claimed that they were somehow related to someone that might have been prosecuted. The State listed one reason for striking Juror No.1 was because, one of the officers expressed concern that a previous prosecutor might have prosecuted a relative of the jurors. Juror No. 2, the State claimed that one of the law enforcement officers expressed concern again that she was related to one of their supervisors whose son was prosecuted during the very recent past. Juror No. 14, the State stated that there was a concern by Officer Shumpert that the juror was related to two (2) different McMillians that had been prosecuted, although the names were not available. None of the officers were questioned by the judge nor was any information brought before the court to verify that these people had some relation to someone that had been prosecuted.

The State also claimed that Juror No. 2 was also struck because of an incomplete juror card. Other jurors did not fill out their cards completely, and for that reason these potential jurors that were stricken are received disparate treatment.

Another reason listed by the State for striking Juror No. 1 was because she lived in a high crime area. The Mississippi Court of Appeals in ***Robinson*** held that the "potential juror's street address was nothing more than a readily-available pretext to exclude him because of his race." ***Robinson v. State***, 773 So.2d 943, 950 (Miss App., 2000). In ***Robinson,*** however there were no other disqualifying traits, and numerous other cases have listed a high crime area as a race-neutral reason to strike a potential juror. *See* ***Baldwin v. State***, 732 So.2d 236 (Miss. 1999), and ***Gibson v. State***, 731 So.2d 1087 (Miss. 1998).

Nonetheless ***Mississippi Code Annotated Section 15-5-2***[1] states that "[a] citizen shall not be excluded from jury service in this state on account of race, color, religion, sex, national origin, or economic status." Excluding someone just because they live in a high crime area is a violation of this statute. Economic status can be a correlation to life in a high crime area. The statute also states that people selected for jury service are selected at random and represent a fair cross section of the population of the area served by the court. ***Mississippi Code Annotated Section 15-5-2***. By striking those people who live in high crime areas, juries are not made up of a fair cross section of the population. Generally, it is known that people that live in higher crime areas tend to be of a lower economic status and by striking these people is violating Mississippi Statutory Law. "Serving on a jury is a right, privilege and responsibility of all our citizens." ***Article 3, Section 18 of the Mississippi Constitution***.

Although trial judges are afforded great deference in their ***Batson*** rulings, as this Court stated in ***Flowers***, neither prosecutors nor defense counsel should be allowed to manipulate ***Batson*** to the point where voir dire is simply an exercise in finding race neutral reasons. ***Flowers***, 947 So.2d at 937. The trial judge committed reversible error in allowing the State to Strike Jurors No. 1, No. 2, and No. 14. The Prosecution clearly engaged in disparate treatment and the reason for striking the jurors were insufficient.

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[1] Even though the Appellant did not object during the trial to the statute listed above, "if there is a finding of plain error, a reviewing court may consider the issue regardless of the procedural bar. A review under the plain error doctrine is necessary when a party's fundamental rights are affected, and the error results in a manifest miscarriage of justice." ***McGee v. State***, 953 v. State 211, 215 (Miss. 2007); ***Williams v. State***, 794 So.2d 181, 187-88 (Miss. 2001). "To determine if plain error has occurred, we must determine 'if the trial court has deviated from a legal rule, whether that error is plain, clear, or obvious, and whether the error has prejudice the outcome of the trial.'" ***McGee***, 953 So.2d at 215 (citing ***Cox v. State***, 793 So.2d 591, 597 (Miss.2001)).

CONCLUSION

Joe Solomon Pruitt is entitled to have his armed robbery conviction reversed and remanded for a new trial based on the violations by the prosecution for striking three jurors because of their race.

Respectfully submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS
For Joe Solomon Pruitt, Appellant

BY: _____

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CERTIFICATE OF SERVICE

I, Benjamin A. Suber, Counsel for Joe Solomon Pruitt, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

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This the 27th day of August, 2007.

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