

COPY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

J. C. RAMSEY

FILED

APPELLANT

FEB 20 2008

VS.

**OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS**

NO. 2007-KA-1425

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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VS.

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STATEMENT OF THE ISSUES

THE TRIAL JUDGE PROPERLY RULED THAT THE DEFENDANT FAILED TO ESTABLISH A PRIMA FACIE CASE OF DISCRIMINATION IN THE STATE'S SELECTION OF JURY MEMBERS AND USE OF PEREMPTORY STRIKES.

STATEMENT OF THE FACTS

The Defendant, J.C. Ramsey, was tried in Forrest County on July 31, 2007 and was convicted of two counts of burglary of an automobile and one count of grand larceny. He was sentenced as a habitual offender to twenty-four years in the custody of the Mississippi Department of Corrections without the possibility of parole.¹

At the conclusion of voir dire, the trial judge asked if there were any challenges for cause on behalf of the State or the Defense. (Transcript p. 48). There were none. (Transcript p. 48). The State then tendered its first twelve jurors and exercised four of its six peremptory strikes. (Transcript

¹ As the only issue raised by Ramsey is with regard to jury selection, the facts regarding the crimes he committed are not set forth in the State's Brief. For the sake of brevity, the State has only set forth the pertinent facts regarding jury selection.

p. 48). The Defense then raised “its first *Batson* challenge based on the fact that three of the first four African American jurors have been struck and ask that the State be required to give us cause as to why those jurors were struck.” (Transcript p. 48 - 49). The Court noted that jury selection was not complete and that at that point a prima facie case had not been established. (Transcript p. 49). The Court then noted that the State accepted one African American juror and that it had not exhausted its peremptory challenges at that time. (Transcript p. 49). The Court specifically ruled that it was “going to overrule your motion at this time.” (Transcript p. 49). The Defense then exercised its strikes. (Transcript p. 49 - 51). The State used one more of its six peremptory strikes and the jury was selected without a renewal of the Defense’s *Batson* challenge. (Transcript p. 51 - 52).

SUMMARY OF THE ARGUMENT

Ramsey did not establish a prima facie case of discrimination in the State’s selection of jury members and use of peremptory strikes. Further, the record does not provide sufficient information regarding the racial makeup of the jury selected or the potential jurors stricken by the State.

ARGUMENT

Ramsey argues that the “trial court erred when it found that the Appellant had not established a prima facie case of discrimination by the prosecution under *Batson v. Kentucky*, 476 US 79 (1986) when the State used three of four peremptory challenges exercised against African-American jurors.” (Appellant’s Brief p. 2). The standard of review in such cases is as follows:

Our standard of review requires reversal only if the factual findings of the trial judge are “clearly erroneous or against the overwhelming weight of the evidence.” *Tanner v. State*, 764 So.2d 385 (Miss. 2000). Any determination made by a trial judge under *Batson* is accorded great deference because it is “based, in a large part, on credibility.” *Coleman v. State*, 697 So.2d 777, 785 (Miss. 1987). In the *Batson* context, the term “great deference” has been defined as meaning an insulation from appellate reversal of any trial findings which are not clearly erroneous. *Lockett v.*

State, 517 So.2d 1346, 1349-50 (Miss. 1987).

Moore v. State, 914 So.2d 185, 189 (Miss. Ct. App. 2005). As noted by this Court in *Knight v. State*, the Mississippi Supreme Court has held in this regard that “[t]rust is placed in a trial judge to determine whether a discriminatory motive drives the reasons given for striking a potential juror” and that “[o]ne of the reasons the trial court is afforded such deference when a *Batson* challenge is raised is because the demeanor of the attorney making the challenge is often the best evidence on the issue of race neutrality.” 854 So.2d 17, 22 (Miss. Ct. App. 2003) (quoting *Walker v. State*, 815 So.2d 1209 (Miss. 2002)). “Some of the time the unspoken intangible may be the judge’s perception of the prosecutor arising from past experience.” *Collins v. State*, 817 So.2d 644, 656 (Miss. Ct. App. 2002).

As set forth above, the only information in the record regarding the racial makeup of the selected jury and those potential jurors who were stricken by the State is as follows:

- Juror number one Trannie Richmond is African American. (Transcript p. 49).
- Three of the five peremptory strikes made by the State were against African American potential jurors. (Transcript p. 49).

There is no additional information regarding the racial makeup of the selected jury or the race of the two other potential jurors stricken by the State. Thus, there is insufficient information in the record to support Ramsey’s assignment of error on appeal. See *Mason v. State*, 440 So.2d 318, 319 (Miss. 1983); *Jackson v. State*, 684 So.2d 1213, 1223 -1224 (Miss.1996); and *Hansen v. State*, 592 So.2d 114, 127 (Miss. 1991). Furthermore, “there is a presumption that the judgment of the trial court is correct and the burden is on the Appellant to demonstrate some reversible error to this Court.” *Acker v. State*, 797 So.2d 966, 971 (Miss. 2001) (quoting *Branch v. State*, 347 So.2d 957, 958 (Miss.1977)).

More importantly, however, is the fact that Ramsey did not establish a prima facie case of

discrimination. In order to establish a prima facie case, Ramsey “was required to show: (1) that he is a member of a ‘cognizable racial group;’ (2) that the proponent has exercised peremptory challenges toward the elimination of veniremen of his race; and (3) that facts and circumstances raised an inference that the proponent used his peremptory challenges for the purpose of striking minorities.” *Puckett v. State*, 788 So.2d 752, 756 (Miss. 2001) (quoting *Batson v. Kentucky*, 476 U.S. 79, 97, 106 S.Ct. 1712, 1723, 90 L.Ed.2d 69 (1986)). “The pivotal question is ‘whether the opponent of the strike has met the burden of showing that proponent has engaged in a pattern of strikes based on race or gender, or in other words, the totality of the relevant facts gives rise to an inference of discriminatory purpose.’” *Id.* at 757. As this Court noted in *Chandler v. State*, the Fifth Circuit has held that:

To establish a prima facie case, a party is required to show that the circumstances surrounding the peremptory challenges raise an inference of purposeful discrimination. The trial court should consider all relevant circumstances in determining whether a prima facie *Batson* violation can be established. Factors that give rise to an inference of discrimination include, among others, a pattern of strikes against jurors of a certain race and the party's statements and questions during voir dire. “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.’ ”

967 So.2d 47, 52-53 (Miss. Ct. App. 2006) (quoting *Brown v. Kinney Shoe Corp.*, 237 F.3d 556, 561 (5th Cir. 2001)) (*Emphasis added*). Ramsey’s only argument in support of his contention that the State was discriminatory in its use of peremptory strikes was the fact that the State used three of its first four peremptory strikes against African American potential jurors. However, as this Court held in *Gilbert v. State*, “[t]he number of peremptory strikes which the State used against the minority members, standing alone, is insufficient to establish an inference to a pattern of purposeful discrimination.” 934 So.2d 330, 337 (Miss. Ct. App. 2006) (quoting *Dennis v. State*, 555 So.2d 679,

681 (Miss. 1989)). Moreover, as noted in *Collins v. State*, the test is simply whether Ramsey has shown that the State had an established "pattern of striking all or almost all of a certain racial group." 817 So.2d 644, 656 (Miss. Ct. App. 2002). Ramsey did not.

Accordingly, Ramsey's argument is without merit as there is insufficient information in the record to support Ramsey's assignment of error on appeal and as he was unable to establish a pattern of the State's discriminatory use of peremptory strikes.

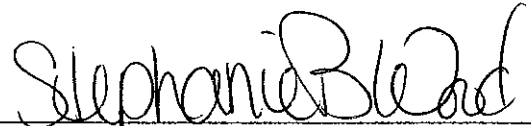
CONCLUSION

The State of Mississippi respectfully requests that this Honorable Court affirm the conviction and sentence of J.C. Ramsey as the trial judge properly ruled that Ramsey failed to establish a prima facie case of discrimination in the State's selection of jury members and use of peremptory strikes.

Respectfully submitted,

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CERTIFICATE OF SERVICE

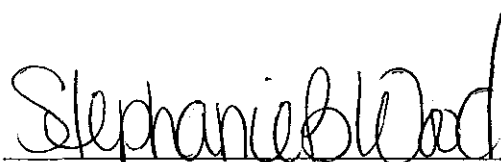
I, Stephanie B. Wood, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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