IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

J. C. RAMSEY A/K/A HENRY EARL RAMSEY — APPELLANT

V.

NO. 2007-KA-01425-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF OF THE APPELLANT

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J. C. RAMSEY AKA HENRY EARL RAMSEY **APPELLANT**

V. **NO. 2007-KA-01425-COA**

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. J. C. Ramsey aka Henry Earl Ramsey, Appellant
3. Honorable Jon Mark Weathers, District Attorney
4. Honorable Robert Helfrich, Circuit Court Judge

This the 10th day of December, 2007.

Respectfully Submitted,
MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY: _____

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STATEMENT OF THE ISSUES

I. THE TRIAL COURT ERRED WHEN IT FOUND NO PRIMA FACIE CASE OF DISCRIMINATION BY THE PROSECUTION WHEN THE STATE USED THREE OF FOUR PEREMPTORY CHALLENGES EXERCISED AGAINST AFRICAN AMERICAN JURORS.

STATEMENT OF THE CASE

J.C. Ramsey was charged with two counts of grand larceny for allegedly stealing a truck, and for allegedly stealing various items from another individual's truck. He was also charged with two counts of burglary of an automobile for allegedly breaking into two different vehicles and taking various items. (C.P. 8-10; R.E. 3-5). Ramsey was tried in the Forrest County Circuit Court, and he was found guilty on the two counts of burglary of an

automobile, and one count of grand larceny, but the jury was unable to reach a verdict on the grand larceny charge for the theft of the truck. (C.P. 60-63; R.E. 6-9). The trial court declared a mistrial on count one, and sentenced Ramsey as an habitual offender on the remaining charges to twenty-four (24) years in the custody of the Mississippi Department of Corrections without the benefit of probation, parole, or early release. (C.P. 60-63; R.E. 6-9). J.C. Ramsey is presently in the custody of the Mississippi Department of Corrections. (C.P. 64-65; R.E. 10-11).

SUMMARY OF THE ARGUMENT

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 U.S. 79 (1986) when the state used three of four peremptory challenges exercised against African-American jurors.

FACTS

On or about February 18, 2006, Pam Pearson was working her job as a sitter at the Mark III Apartments located in Hattiesburg, Mississippi. (Tr. 65). She was working from 3:00 p.m. to 8:00 a.m. (Tr. 67-69), so she left her car in the parking lot, and she did not return to it until the next morning. (Tr. 69). When she did return to her vehicle, she found that it had been broken into and some video tape movies had been removed from her vehicle. (Tr. 67; 70).

On February 18, 2006, Justin Harvison parked his car over at the Mark III apartments. (Tr. 78). He spent the night with a friend, and when he went to his car the next morning, he

found the window had been broken out and his radio had been taken. (Tr. 80-83). He called the police who came and took a report of the incident. (Tr. 80-83).

In the early morning hours of February 19, 2006, Chris Bass heard some noises outside of his window. (Tr. 88-89). He looked out and saw a man in the back of the work truck Bass drove. (Tr. 89). He got dressed, but by the time he got outside the man was gone. 89-90). He noticed a chainsaw and some other tools missing from the back of his work truck, so he called the police. (Tr. 90-93). While the Hattiesburg police department was at Bass' apartment taking a statement, another officer saw a suspect fitting the general description given by Bass in the Wal-Mart parking lot. (Tr. 102; 122). The individual left the parking lot when he saw the officer. When the officer caught up with and stopped the individual, and he noticed that a chainsaw and tools fitting the description given by Bass were in the bed of the pickup truck. (Tr. 122-30). The individual stopped was J.C. Ramsey, the Appellant in this case. The video tapes Pearson claimed were stolen from her car, and the radio which Harvison claimed was stolen from his car were also found in the pickup truck that Ramsey was driving. (Tr. 122-30).

J.C. Ramsey was charged with one count of grand larceny for the theft of the pickup truck he was found driving, one count of grand larceny for the theft of the chainsaw and tools, and two counts of burglary of an automobile relating to the theft of the video tapes and car radio. (C.P. 8-10; R.E. 3-5). The jury was unable to reach a verdict on the charge of stealing the automobile, but convicted Ramsey on all three counts of burglary of an automobile. (C.P. 60-63; R.E. 6-9).

I. THE TRIAL COURT ERRED WHEN IT FOUND NO PRIMA FACIE CASE OF DISCRIMINATION BY THE PROSECUTION WHEN THE STATE USED THREE OF THE FOUR PEREMPTORY CHALLENGES IT EXERCISED AGAINST AFRICAN AMERICAN JURORS.

1. Standard of Review.

"[A] trial court's determination of whether a showing of racial discrimination has been made will not be reversed unless it is 'clearly, erroneous, or against the overwhelming weight of the evidence.'" ***Johnson v. State***, 792 So.2d 253, 256-57 (Miss. 2001)(citing ***Stewart v. State***, 662 So.2d 552, 558 (Miss.1995)). The Court "will not overrule a trial court on a ***Batson*** ruling unless the record indicates that the ruling was clearly erroneous or against the overwhelming weight of the evidence." ***Manning v. State***, 765 So.2d 516, 519 (Miss. 2000)(citing ***Thorson v. State***, 721 So.2d 590, 593 (Miss.1998).

2. The Trial Court Erred in Finding That a Prima Facie Case Had Not Been Established.

During jury selection, the State used four of the five peremptory challenged allotted to it. Out of the four challenges used by the State, three of those challenges were used against African-American jurors. The trial court found because the State had not exhausted all of its peremptory challenges there was not a prima facie case of discrimination. Specifically, the exchange was as follows:

MS. PAYTON: You Honor, at this time the defense would like to issue it's 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.

MR. GADDIS: In response, Your Honor, I'd say there been no prima facie showing. I would say also at this point jury selection is not complete.

THE COURT: It is not complete, and a prima facie [sic] hasn't been shown. How many African-American jurors are on the panel?

MR. GADDIS: The first one is an African American. We accepted the first juror.

THE COURT: The State has not exhausted its challenges, so I'm going to overrule your motion at this time.

(Tr. 49).

The trial court's ruling was clearly erroneous, and the prosecutor should have been required to give his reasons for exercising the challenges in question. When a party makes a ***Batson*** claim, he or she "must first make a prima facie showing that race was the criteria for the exercise of the peremptory strike." ***McFarland v. State***, 707 So.2d 166, 171 (Miss.1997) (citing ***Batson***, 476 U.S. at 96-97, 106 S.Ct. 1712). "Once the prima facie case has been made, the prosecution must supply race-neutral reasons for using peremptory challenges on minority members. ***Bush v. State***, 585 So.2d 1262, 1268 (Miss.1991)(citing ***Batson***, 476 U.S. at 98, 106 S.Ct. at 1724)." ***Walker v. State***, 740 So.2d 873, 880 (Miss. 1999). Once the prosecutor gives a non-discriminatory reason for exercising the strike, the opponent of the strike then is given an opportunity to show that the reason given by the prosecutor is merely a pretext for discrimination. ***Berry v. State***, 802 So.2d 1033, 1036 (Miss. 2001).

In order to establish a prima facie case of discrimination in the exercise of peremptory

"[T]his Court has recognized that a defendant may make a prima facie showing of purposeful racial discrimination in selection of the venire by relying solely on the facts concerning its selection in his case." ***Id.***

Therefore, the fact that the State had not exhausted it peremptory challenges or the fact that it left an African-American on the jury panel tendered to the defense does not relieve the State from the ***Batson*** issue at hand because the ***Batson*** issue "is concerned exclusively with discriminatory intent on the part of the lawyer against whose peremptory strikes the objection is interposed. ***Johnson v. State***, 792 So.2d 253, 256-57 (Miss.,2001)(citing ***Powers v. Ohio,*** 499 U.S. 400, 406 (1991); ***Batson v. Kentucky***, 476 U.S. 79, 93-94 (1986)).

In ***Booker v. State***, the trial court found that "[b]ecause four of the State's peremptory strikes were exercised against four of the five African-American veniremen, Booker had established a prima facie case of discrimination, and ordered the State to offer race-neutral reasons for each of the strikes." ***Booker v. State***, 2006 WL 2474069, *2 (Miss.Ct.App. Aug. 29, 2006). In ***Walker v. State***, "[T]he prosecutor used seven out of nine peremptory challenges to exclude black persons. The final jury resulted in ten whites and two blacks. . . ." ***Walker v. State***, 740 So.2d 873, 880 (Miss., 1999). The ***Walker*** Court concluded "that an inference of racial discrimination was presented by Walker and that the lower court erred in failing to conduct a ***Batson*** hearing." ***Id.***

In ***Berry v. State***, 802 So.2d 1033, 1036 (Miss. 2001), the Court remanded for a ***Batson*** hearing where the State used all "twelve of its peremptory strikes. . . . Seven white

prospective jurors and five African American prospective jurors were stricken, resulting in a jury composed of eleven white jurors and one African American juror." ***Berry v. State***, 802 So.2d at 1036. While in ***Scott v. State***, 2007 WL 1677944, *5 (Miss.Ct.App. June 12, 2007), the prosecution used ten of its eleven peremptory challenges on black members. There, the Court held, "The prosecution exercised ten of its eleven peremptory challenges against black members of the venire. Said differently, the prosecution used approximately 91% of its challenges against black veniremen. Those statistics alone raise an inference of discrimination." ***Id.***

In another case, ***Chisolm v. State***, 529 So.2d 635 (Miss.1988), "[t]he prosecution used seven of those twelve challenges to exclude black jurors." ***Id.*** at 632. The Court noted that under those facts, the Appellant "[q]uite apparently Chisolm made a prima facie showing meeting the ***Batson*** criteria." ***Id.*** at 632. Thus, the Court in ***Scott***, *supra*, reasoned, "If a prima facie showing was 'quite apparent' where the prosecution used seven of twelve challenges against black veniremen and, as a result, the jury was comprised of ten white jurors and three black jurors, it is equally apparent where the prosecution uses ten of eleven peremptory challenges against black veniremen to end up with a jury of ten white jurors and three black jurors." ***Scott v. State***, 2007 WL 1677944, *5 (Miss.Ct.App. June 12, 2007).

The Supreme Court again found a prima facie case was established in ***Chisolm v. State***, 529 So.2d 635 (Miss.1988) (Chisolm II), where "the prosecution used ten peremptory challenges-nine against black members of the venire." ***Id.*** at 637. There, the Court found "[a]s in ***Chisolm I***, there can be no doubt that Chisolm made his prima facie showing of

purposeful discrimination in the selection of the jury." ***Id.***

The Court has found an inference of discrimination where the prosecutor exercised seven peremptory challenges against African American jurors. ***Thorson***, 653 So.2d at 896. An inference of discrimination was also found where the prosecutor used of nine of eleven peremptory challenges against African Americans. ***Manning v. State***, 735 So.2d 323, 339 (Miss. 1999).

However, the case most analogous to the present case is ***Conerly v. State***, 544 So.2d 1370 (Miss.1989). There the prosecution did accept one African American juror and used five peremptory challenges on African-American jurors. ***Id.*** at 1372. The Mississippi Supreme Court held "**the fact that the prosecution used all of the peremptory strikes necessary (five) to remove all but one black person from the jury satisfies the requirement of raising an inference of racial discrimination.**" ***Conerly v. State***, 544 So.2d at 1372 (emphasis added). Again, in the present case, the prosecution used four the five peremptory challenges it exercised on African-American jurors. (Tr. 49).

Thus, even though the prosecution in this case left one African-American juror on the panel, the fact that the prosecutor used three of the four challenges against African-Americans merits a finding of an inference of discrimination pursuant to ***Conerly***. To borrow from the Court of Appeals' decision in ***Scott***, "The only course of action more egregious would be the use of all peremptory challenges against a particular racial group." ***Scott v. State***, 2007 WL 1677944, *7 (Miss.Ct.App. June 12, 2007). According, the Appellant asserts that the trial court erred in finding that there was not a prima facie case of

discrimination on the part of the prosecutor, and the Court, should remand for a ***Batson*** hearing.

CONCLUSION

The prosecution in this case used three of the four peremptory challenges exercised by it to strike African-American jurors. The trial court erred when it found that the Appellant had not established a prima facie case of racial discrimination on the part of the prosecution in the exercise of its peremptory challenges, and therefore, the Court should remand this matter to the Forrest County Circuit Court for a ***Batson*** hearing where the prosecution will be required to give its reasons for the exercise of it peremptory challenges.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I, Glenn S. Swartzfager, Counsel for J. C. Ramsey aka Henry Earl Ramsey, 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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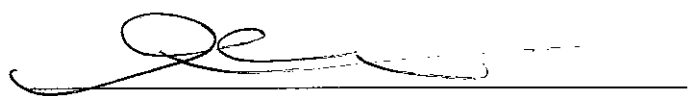
This the 10th day of December, 2007.



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