IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2007-KA-01915-COA

RENALDO BUTLER — APPELLANT

VERSUS

STATE OF MISSISSIPPI — APPELLEE

APPEAL FROM THE CIRCUIT COURT OF THE 1ST JUDICIAL DISTRICT
OF
HINDS COUNTY, MISSISSIPPI

REPLY BRIEF OF APPELLANT

OFFICE OF THE PUBLIC DEFENDER,
HINDS COUNTY, MISSISSIPPI
William R. LaBarre, MSB No. [redacted]
PUBLIC DEFENDER
Shronda Taylor-Leggett, MSB No. [redacted]
Alice Stamps, MSB [redacted]
Virginia L. Watkins, MSB. [redacted]
Assistant Public Defenders
Post Office Box 23029
Jackson, Mississippi 39225
Telephone: 601-948-2683
Facsimile: 601-948-2687

Renaldo Butler v. State of Mississippi

2007-KA-01915-COA

Table of Contents

Renaldo Butler v. State of Mississippi

2007-KA-01915-COA

TABLE OF AUTHORITIES

CONSTITUTIONS, STATUTES AND OTHER AUTHORITIES

REPLY OF APPELLANT

I. THE TRIAL COURT IMPROPERLY INSTRUCTED THE JURY.

The trial court improperly instructed the jury when it denied the defendant the right to have the jury instructed on actual possession. The State's claim that this is only harmless error is ludicrous as the defendant has a constitutional right to have a properly instructed jury. Granting instructions not supported by evidence is error. *Lancaster v. State,* 472 So.2d 363, 365 (Miss.1985). It is well settled that jury instructions must be based on the evidence presented at trial. "Trial courts are required to instruct juries regarding issues of fact only where there appears in the record credible evidence upon which the jury might reasonable find the fact in favor of the requesting party. *Hicks v State* 580 So. 2d 1302,1306. (citing *Ashley v. State* 538 So.2d 1181, 1184 (Miss., 1989).

This Court has held a trial court is not required to give, nor is a defendant entitled to receive, circumstantial evidence instructions where direct evidence of a crime is presented. *See Deal v. State,* 589 So.2d 1257 (Miss.1991); *Ladner v. State,* 584 So.2d 743 (Miss.1991); *King v. State,* 580 So.2d 1182 (Miss.1991); *Sudduth v. State,* 562 So.2d 67 (Miss.1990); *Woodward v. State,* 533 So.2d 418 (Miss.1988), *certiorari denied* 490 U.S. 1028, 109 S.Ct. 1767, 104 L.Ed.2d 202, *rehearing denied* 490 U.S. 1117, 109 S.Ct. 3179, 104 L.Ed.2d 1041; *Boches v. State,* 506 So.2d 254 (Miss.1987). Officer Reed in this case states that he saw the defendant throw drugs to the ground. The case at bar is in essence a "throw down" drug case. This court has dealt with this issue in *Hicks v. State* 580 So. 2d 1302 and *Givens v. State* 618 So.2d 1313. In those cases, this court denied jury instructions on constructive

possession because their was direct evidence of physical possession. The jury should be given proper instructions of the law based upon the facts of a case. In *Millsaps v. State* 767 So.2d 286 the court did not instruct the jury on constructive possession. In *Smith v. State* 839 so.2d 489 the facts are not similar to the case at bar. The *Smith* case has very different facts and concerns drugs in a vehicle, while this case concerns an officer seeing into a crowd at a public car wash and noticing the defendant throw drugs down to the ground. The State made their case a direct evidence when the officer in the case says unequivocally that the defendant was isolated from the crowd and he saw no one but Mr. Butler throw drugs to the ground. The state should not be allowed to abandon its theory of the case prove its case by any means necessary and use law that is inapplicable to the facts at hand.

The trial did err in improperly instructing the jury and the case should be remanded for new trial.

II. THE TRIAL COURT DID ERR IN OVERRULING BATSON CHALLENGE.

The State is correct that the record is incomplete concerning the Batson challenge. The record is incomplete because the trial judge did not properly handle the Batson challenge and denied the defendant his due process rights. The trial court did not make any inquiry about the races of the venire or the racial composition of the jury. The trial judge merely stated that he would take the matter of the objection based on Batson under advisement. The prima facie case of discrimination and its prongs were satisfied because the defendant is black, a pattern of denying black jurors was established, and the jurors were denied service on the juror for no plausible reason.

In *Conerly v. State* 544 So. 2d 1370 , the trial court judge merely stated that the state did not use all of its preemptory challenges. The State did not have to use all of its peremptory challenges because it had already discriminated against black jurors and denied them the right to serve as jurors. The discrimination was not cured. That the prosecutor accepted other black persons as jurors is no defense to a *Batson* claim. *Chisolm v. State,* 529 So.2d at 635.

> "A defendant may establish a prima facie case of purposeful discrimination in selection of the petit jury solely on evidence concerning the prosecutor's exercise of peremptory challenges at the defendant's trial. A combination of factors in the empanelling of the petit jury, as in the selection of the venire, raises the necessary inference of purposeful discrimination. In deciding whether the defendant has made the requisite showing, the trial court should consider all relevant circumstances. For example, a "pattern" of strikes against black jurors included in the particular venire might give rise to an inference of discrimination. Similarly, the prosecutor's questions and statements during *voir dire* examination and in exercising his challenges may support or refute an inference of discriminatory purpose." *Batson v. Kentucky*, 476 U.S. 96-98

The State should not be given the benefit of the trial court mishandling the Batson challenge. The mishandling of the Batson issue is outright prejudice toward the defendant. In *Conerly v. State* 544 So. 2d 1370, the case stated that "he has shown that he is a black person and that the district attorney has exercised peremptory challenges to remove black persons from the jury-Jean Swain and four others. Finally, 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 1370. The case at bar is similar in that the State used 4 of 6 preemptory

challenges to strike only black jurors. Therefore, we state that an inference of racial discrimination was shown and a prima facie case established.

The State cites *Florence v. State* 786 So.2d 409 to support its rationale. But in reading the *Florence* case, it further states that, the Court held that "a trial judge is not authorized under *Batson* to defer the requirement that the prosecution give its race-neutral reasons for its strikes at the time the inference arises, until the jury selection process has concluded. We do not condone this process and believe it to be violative of the dictates of *Batson." Florence v. State* 786 So. 2d 409. In the *Florence* case there is a record that seems to correlate the actions of the trial judge with the final make-up of the jury. In the case at bar the record does not substantiate what the trial court did. It is a denial of due process to allow this conviction to stand when the defendant was not given the opportunity to have a duly composed jury.

III. THE TRIAL COURT ABUSED ITS DISCRETION IN ALLOWING THE IRRELEVANT TESTIMONY OF SHERLY CHANDLER CONERNING HER SONS' CRIMINAL HISTORIES

The cumulative testimony of Sheryl Chandler concerning the criminal history of her children was irrelevant to the issue of whether Renaldo Butler possessed cocaine. The State did have and use a broad scope to cross examine Ms. Chandler. The trial judge allowed the irrelevant evidence to show the bias or prejudice against the state that Ms. Chandler might have had. However, the State was allowed too wide a latitude to spend several minutes discussing the criminal history and personal relationship and conflict that Ms. Chandler had with the State's prosecutor which also prosecuted her sons. Under M.R.E. 401 only relevant evidence is to be admitted. This is evidence that has any tendency to make the

existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Ms. Chandler's children criminal history should have been excluded because the information was irrelevant. Ms. Chandler's bias could have been shown in a permissible way to prevent prejudice to the Defendant.

The prosecution questioned Ms. Chandler extensively about the criminal records of her children. (T. 114-116, 120) The prosecution begin his cross examination about one of Ms. Chandler's sons being sentenced to life imprisonment for Murder.(T. 116) The prosecution did not just ask the questions he made this a personal attack as he was the prosecutor who prosecuted one of her sons. The defense made a timely objection to the relevance of this line of questioning.(T. 114-115, 120) The trial court abused its discretion by allowing the testimony concerning the criminal histories. The general rule is that on issues of admissibility of relevant evidence in accordance with bias the rules should be looked at as a whole.

IV. THE PHYSICAL EVIDENCE SHOULD HAVE BEEN SUPRESSED

Officer Casanova Reed, who had been on the police only 10 months, was patrolling Northside Drive, near the Chuk Stop Gas Station and Car Wash. (T. 84).Officer Reed saw a group of about 15 to 20 individuals gathered at the car wash on the corner of Northside Drive and Mosley (T. 84; 92). Officer Reed states that he approached the car wash and noticed the group of individuals drinking, but did not offer any citations. (T. 85; 99) Officer Reed stated that Renaldo Butler, walked behind the wall of the car wash, and dropped by his foot, what he thought was crack-cocaine. (T. 86; 98; 101) Without any field testing, Renaldo was handcuffed,

arrested and secured in Officer Reed's patrol car, without being read his rights, nor an explanation of the charges against him, until after he was placed in the police car. (T. 128) Mrs. Barnes also testified that she did not know where the crack came from, neither did she know which officer retrieved the substance.(T. 111)

In the State's response, it based its argument on the fact that the Court must consider the circumstances based on the totality of the circumstances. There is not any substantial credible evidence to link what could be drugs to the defendant. The trial judge stated that the defendant did not have any expectation of privacy in the plastic bag that was discarded is an erroneous ruling to allow the physical evidence. Officer Reed was a new police officer eager to make what he thought could be a drug arrest. There were other people at the car wash and the defendant was picked out. Therefore, with at best only reasonable suspicion saw the defendant standing by what appeared to be crack cocaine. The case is about arresting someone without evidence to link them to the charges in this case. Officer Reed states that he did not know what the item dropped was, but arrested the defendant anyway. The arrest was illegal, and was merely coincidence that the item was a narcotic. The seized item being an illegal substance does not cure the fact that the arrest was illegal. *Conerly v. State* 760 So.2d 737 (Miss.2000) To allow this ruling to stand would open the floodgates of police officers to arrest people and deny them their liberty and then investigate later.

CONCLUSION

Based on the foregoing arguments and recited authority both in this Reply and Brief on the Merits by Appellant, Mr. Butler respectfully submits this honorable Court should reverse this cause and remand for a new trial.

Respectfully submitted,

Shronda Taylor Leggett, MSB No. [redacted]
Assistant Public Defender

HINDS COUNTY PUBLIC DEFENDER
Post Office Box 23029
Jackson, Mississippi 39225
Telephone: 601-948-2683
Facsimile: 601-948-2687

Certificate of Service

I, the undersigned attorney, do hereby certify that I have this day caused to be hand-delivered a true and correct copy of the foregoing REPLY BRIEF OF APPELLANT ON THE MERITS to the following:

Honorable Robert Shuler Smith,
DISTRICT ATTORNEY
Hinds County Courthouse
Post Office Box 22747
Jackson, Mississippi 39225

Breland Hilburn,
SPECIAL CIRCUIT JUDGE
Hinds County Courthouse
Post Office Box 327
Jackson, Mississippi

And by United States Mail, postage prepaid, to

Honorable James Hood III
ATTORNEY GENERAL
Charles W. Maris Jr.
Assistant Attorney General
Walter Sillers State Office Building
Post Office Box 220
Jackson, Mississippi 39205-0220

Mr. Renaldo Butler
MDOC No. L0674
Wilkinson County CF
Post Office Box 1079
Woodville, Mississippi 39669

So certified, this the 18th day of August, 2008.

Shronda Taylor Leggett, MSB No. [redacted]
Certifying Attorney