

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ALEXANDER WOMACK AND MAURICE WOMACK

APPELLANT

VS.

NO. 2008-KA-0144

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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## STATEMENT OF THE ISSUES

- I. The Trial Court's ruling that the State's responses to the Defendant's Batson challenge were not pretextual is not clearly erroneous and is entitled to great deference and the Trial Court's ruling should be affirmed.
- II. Maurice and Alexander Womacks' convictions are supported by the overwhelming weight of the evidence and the jury's verdict and the Trial Court's rulings should be affirmed.

## SUMMARY OF THE ARGUMENT

The Trial Court's ruling that the State's responses to the Defendants' Batson challenge were not pretextual is not clearly erroneous and is entitled to great deference and the Trial Court's ruling should be affirmed. The *Batson* doctrine is exclusively concerned with discriminatory intention the part of the lawyer against whose use of his peremptory strikes the objection is interposed. It is not concerned with racial, gender, or ethnic balance on petit juries, and it does not hold that a party is entitled to a jury composed of or including members of [a] cognizable group. *Strickland v. State*, 980 So.2d 908, 915 (Miss.2008) (quoting *Ryals v. State*, 794 So.2d 161, 164 (Miss.2001)) (emphasis added).

Under *Batson*, the pretextual reason proffered by the prosecutor must be intended to disguise purposeful racial discrimination. The race-neutral reason proffered by the prosecutor must be a false cover for an intentional, racially discriminatory purpose. To satisfy *Batson*, the trial court must determine whether the objecting party has met their burden to prove there has been purposeful discrimination in the exercise of peremptory challenges." *Carter v. State*, 799 So.2d 40, 46 (Miss.2001) (quoting *Stewart v. State*, 662 So.2d 552, 557-58 (Miss.1995)). 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 v. State*, 947 So.2d 910, 917 (Miss.2007) (citing *Berry v. State*, 802 So.2d 1033, 1042 (Miss.2001)).

Womack argues on appeal that because the State cited inattentiveness as one of its reasons for striking jurors that this is “unverifiable” and the defendants are therefore entitled to a new trial. However, as noted, once the State has given a race neutral reason for the strike, it is then the defendant’s burden to demonstrate pretext. The State cited other factors in addition to inattentiveness. Further, the State did not strike an African American Female who remained on the jury. Nor did the State move to strike the African American male who serve as the alternate. When challenged, Womack’s attorney also used the demeanor of the juror as a race neutral reason for the strike, stating that the white female was “stonish” while he spoke, but smiling when the prosecution spoke. The defense further struck a white male juror and a white female juror for inattentiveness. The trial court correctly accepted these race neutral reasons from the defense.

The circuit court, is uniquely in a position to observe the demeanor and assess the credibility of the district attorney's reply. No evidence is present in this record that would justify a definite and firm conviction of purposeful racial discrimination. This issue is without merit and the decision of the Trial Court should be affirmed.

Maurice and Alexander Womacks' convictions are supported by the overwhelming weight of the evidence and the jury's verdict and the Trial Court's rulings should be affirmed. The evidence clearly showed that the Womacks were present at the Exxon Truck Stop with a shotgun, that they parked in a dark area and were attempting to hide their identities by using a ski mask and bandanas, that Alexander Womack was walking toward the entrance of the store with

the and then attempted to hide the gun under the car when he saw Officer Kennedy. These facts, along with reasonable inferences therefrom, are overwhelming evidence that the Womacks were attempted to rob the Exxon Truck Stop with a shot gun on the evening of December 30, 2006. The jury's conviction of Alexander and Maurice Womack for attempted robbery with a deadly weapon was clearly supported by the overwhelming weight of the evidence and the ruling of the court should be affirmed.

### **ARGUMENT**

**I. The Trial Court's ruling that the State's responses to the Defendant's Batson challenge were not pretextual is not clearly erroneous and is entitled to great deference and the Trial Court's ruling should be affirmed.**

On *Batson* determinations, the Mississippi Supreme Court has established that "[a] reversal will only occur if the factual findings of the trial judge appear to be "clearly erroneous or against the overwhelming weight of the evidence." *Tanner v. State*, 764 So.2d 385, 393 (Miss.2000) Further, "on appellate review, the trial court's determinations under Batson ... are accorded great deference because they are based, in a large part, on credibility." *Coleman v. State*, 697 So.2d 777, 785 (Miss.1997). The term "great deference" has been defined in the *Batson* context as meaning an insulation from appellate reversal any trial findings which are not clearly erroneous. *Lockett v. State*, 517 So.2d 1346, 1349 (Miss.1987).

United States Supreme Court recently held that "On appeal, a trial court's ruling on the issue of discriminatory intent must be sustained unless it is clearly erroneous." *Snyder v. Louisiana*, ---U.S. ---, ---, 128 S.Ct. 1203, 1207, 170 L.Ed.2d 175, 185, 2008 U.S. LEXIS 2708 at \*21 (2008). Deference to trial court findings on the issue of discriminatory intent makes particular sense in this context because evaluation of the prosecutor's state of mind based on

demeanor and credibility lies ‘peculiarly within a trial judge’s province. *Hernandez v. New York*, 500 U.S. 352, 365, 111 S.Ct. 1859, 114 L.Ed.2d 395 (1991) (quoting *Wainwright v. Witt*, 469 U.S. 412, 428, 105 S.Ct. 844, 83 L.Ed.2d 841 (1985)) In *Hernandez*, the United States Supreme Court added that “in the absence of exceptional circumstances, we would defer to [the trial court].” *Hernandez*, 500 U.S. at 366, 111 S.Ct. 1859.

The Mississippi Supreme Court has stated that the *Batson* doctrine is exclusively concerned with discriminatory intention the part of the lawyer against whose use of his peremptory strikes the objection is interposed. It is not concerned with racial, gender, or ethnic balance on petit juries, and it does not hold that a party is entitled to a jury composed of or including members of [a] cognizable group. *Strickland v. State*, 980 So.2d 908, 915 (Miss.2008) (quoting *Ryals v. State*, 794 So.2d 161, 164 (Miss.2001)) (emphasis added).

Under *Batson*, the pretextual reason proffered by the prosecutor must be intended to disguise purposeful racial discrimination. The race-neutral reason proffered by the prosecutor must be a false cover for an intentional, racially discriminatory purpose. To satisfy *Batson*, the trial court must determine whether the objecting party has met their burden to prove there has been purposeful discrimination in the exercise of peremptory challenges.” *Carter v. State*, 799 So.2d 40, 46 (Miss.2001) (quoting *Stewart v. State*, 662 So.2d 552, 557-58 (Miss.1995)). 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 v. State*, 947 So.2d 910, 917 (Miss.2007) (citing *Berry v. State*, 802 So.2d 1033, 1042 (Miss.2001)).

Womack argues on appeal that because the State cited inattentiveness as one of it’s reasons for striking jurors, that the State should have been required to substantiate the

inattentiveness of the jurors in responding to Womack's *Batson* challenges. However, as noted, once the State has given a race neutral reason for the strike, it is then the defendant's burden to demonstrate pretext. The State cited other factors in addition to inattentiveness, including a juror who had a son who had served time and who may have served time himself although he did not answer the question when it was asked in voir dire. Another juror was noted to have been inattentive and scowling when the prosecutor spoke, this was further buttressed by the fact that he had also gone to school with the defense counsel. The State struck a black male juror who was noted to have been inattentive, and who was also a forklift operator. A black female juror was struck because she worked for the Mississippi Department of Corrections as well as for inattentiveness. A black male juror was struck because he was employed with the City of Jackson and because he was inattentive.

Further, the State noted that it did not strike an African American Female who remained on the jury. Nor did the State move to strike the African American male who serve as the alternate. When challenged, Womack's attorney also used the demeanor of the juror as a race neutral reason for the strike, stating that the white female was "stonish" while he spoke, but smiling when the prosecution spoke. The defense further struck a white male juror and a white female juror for inattentiveness. The trial court correctly accepted these race neutral reasons from the defense.

The circuit court, is uniquely in a position to observe the demeanor and assess the credibility of the district attorney's reply. Its rulings are entitled to great deference and ought not be reversed "simply because we would have decided the case differently." *Easley*, 532 U.S. at 242, 121 S.Ct. 1452. Rather, this Court must have a "definite and firm conviction that a mistake

has been committed.” *Id.* Given the trial court's pivotal role in evaluating Batson claims the trial court's ruling on the issue of discriminatory intent must be sustained unless it is clearly erroneous. *Id.*

No evidence is present in this record that would justify a definite and firm conviction of purposeful racial discrimination. This issue is without merit and the decision of the trial court should be affirmed.

**II. Maurice and Alexander Womacks’ convictions are supported by the overwhelming weight of the evidence and the jury’s verdict and the Trial Court’s rulings should be affirmed.**

A motion for a new trial questions the weight of the evidence. *Bush*, 895 So.2d at 844. Such a motion is within the discretion of the trial court, which “should be invoked only in exceptional cases in which the evidence preponderates heavily against the verdict.” *Id.* (quoting *Amiker v. Drugs for Less, Inc.*, 796 So.2d 942, 947 (Miss.2000)). “[W]e will only disturb a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice.” *Id.* When reviewing a denial of a motion for a new trial, we weigh the evidence in the light most favorable to the verdict. *Id.*

Officer Kennedy King testified that he drove into the truckstop and saw a car parked in a dark area where there usually were no cars parked. He turned off his lights and positioned himself to observe the car. He saw Alexander Womack walking toward the entrance of the store. Womack was wearing a dark overcoat with large pockets, a sock type ski mask and a bandana over his face. He saw Officer King and panicked. Womack froze and began to shake. He turned and went the other way, threw down his gun under the car and went back towards the front of the store. Officer King turned his lights on, circled his car around and could then see the shotgun

Alexander Womack had thrown down. He saw Maurice Womack, the driver of the car, wearing a bandana over his face. Maurice Womack got out of the car and went towards the store. Officer Kennedy stopped him and handcuffed him and then called for backup. Officers McClendon and Miller arrived. Officer McClendon retrieved the loaded shotgun from underneath the car. When Alexander Womack returned from the store he came back to the car, but was no longer wearing his bandana or ski mask. The officers also received a shot gun shell from the right front jacket pocket of Alexander Womack, and another from Maurice Womack's right blue jeans pocket.

The State was clearly able to prove that Alexander and Maurice Womack were at the Exxon Truck Stop on December 30<sup>th</sup> of 2006. The Womacks were charged with attempted robbery with a deadly weapon. The State was clearly able to show that Alexander and Maurice Womack attempted to rob the Exxon Truck Stop and they committed a direct act toward the commission of the crime. Alexander Womack was caught walking toward the store at night with a shotgun under his coat, a ski mask and a bandana over his face. Maurice Womack, the driver of the car also had a bandana over his face. The crime was not completed only because Officer Kennedy interrupted the Maurice and Alexander Womack's activities that night. The officers testified that it was a warm night and that there was no need for ski masks or bandanas for protection from the cold.

The evidence showed that the Womack's were parked in a dark place so as not to be seen. Alexander Womack had the shotgun in hand and was headed toward the store. When he saw the officer he threw the shotgun under the car. The Womacks were clearly in the initial acts of committing attempted robbery with a deadly weapon. The jury is entitled to make reasonable inferences, and it is reasonable to infer here that the Womacks were attempting to conceal

themselves and their identity by parking in the dark and by obscuring their faces with bandanas and ski masks. The jury is entitled to infer that a disguised man moving toward the entrance of a store with shot gun, while his getaway car waits for him, is going to rob the store. The jury is further entitled to this inference by the Alexander Womack's fearful behavior and his attempt to hide the gun when he was seen by Officer Kennedy.

Taking the evidence in the light most favorable to the verdict, the Womacks' convictions are not contrary to the overwhelming weight of the evidence. Their arguments are, therefore, without merit.

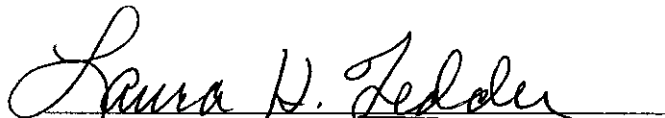
### **CONCLUSION**

The issues raised on appeal by Alexander and Maurice Womack are without merit and the jury's verdicts and the rulings of the trial court should be affirmed.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

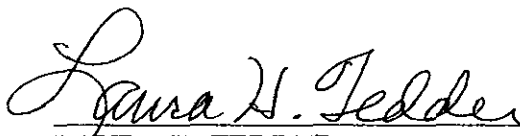
I, Laura H. Tedder, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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