CERTIFICATE OF INTERESTED PERSON

LORETHA PAULINE LOGAN MURRAY

v.

STATE OF MISSISSIPPI

NO. 2008-KA-01039-COA

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 the Supreme Court and/or judges of the Court of Appeals may evaluate possible disqualification or recusal.

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APPELLANT

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3. The Court erred in admitting Appellant's alleged statement into evidence.

4. The verdict was against the overwhelming weight of the evidence.

STATEMENT OF THE CASE

Loretha Pauline Logan Murray appeals her conviction from the Circuit Court of Scott County, Mississippi, of 1 count of Credit Card Fraud and a sentence of three (3) years in the custody of the Mississippi Department of Corrections, fine of $1,000.00, all clerk's filing and process fees, and restitution to the victim in the amount of $1,000.00.

Leslie Lashika Lay, Appellant and Appellant's son visited an office in Lackey Hospital, Forest, Mississippi, used by a Dr. Carter who saw his foot care patients there every other Thursday. Dr. Carter was accompanied by his wife Amarilyse Palomino Carter, who acted as his office manager and medical assistant (T-41) on trips from his home base office in Magee, Mississippi.

Leslie Lashika Lay stole Ms. Carter's wallet from a purse Ms. Carter had left on a windowsill in Dr. Carter's office near the room where Dr. Carter saw patients. Leslie

Lashika Lay used the credit card to wire herself $1,000.00 by Western Union. Appellant and Leslie Lashika Lay were indicted for fraudulently using the credit card to obtain money. Leslie Lashika Lay died before she could be tried and Appellant was tried on the charge and convicted. No evidence was adduced at trial that Leslie Lashika Lay shared any of the proceeds with Appellant.

SUMMARY OF THE ARGUMENT

1. In a Batson inquiry failure of the State to articulate a racially neutral reason for a strike is established when both the accused and the venireperson are African American and the ground for the strike is that the venireperson is unemployed.

2. In a Batson inquiry the falsity of the ground for the peremptory challenge establishes that there was no reason for the challenge and thus no racially neutral ground for the challenge.

3. A policeman's representing to a suspect that it would be better for Appellant if she confessed rendered her resulting statement involuntary and thus inadmissible.

4. An alleged accomplice to a crime who takes no active part in the crime and receives no reward is not criminally liable for it, even if he or she approves of the act.

ARGUMENT

I.

THE COURT ERRED IN OVERRULING APPELLANT'S BATSON OBJECTION TO THE STATE'S PEREMPTORY CHALLENGE OF VENIREMAN SPIVEY

In Batson v. Kentucky, 476 U.S. 79, 89, 106 S. Ct. 1712 (1986) the U.S. Supreme Court held that:

> the Equal Protection Clause forbids the prosecutor to challenge potential jurors solely on account of their race or on the assumption that black jurors as a group will be unable impartially to consider the State's case against a black defendant.

At trial in the case before the Court, Appellant raised a Batson objection to the State's peremptory challenge of juror Robert Spivey (T-27). After the State had issued other challenges and selected 12 jurors for the Court to consider, the Court examined the Batson objections (T28-30) and the following colloquy occurred:

> BY THE COURT: All right. Uh - -you struck - - us - - Spivey's black, you struck Stingley who's black, you struck Nicks is black, you've accepted - - uh - - you struck one white. I recognize that the defendant, Ms. Murray, is a member of the African American race. Uh - - I'm going to require you to give a neutral racial reason for your strikes for Robert Spivey.
>
> BY MR. KILGORE: Your Honor, the only - - -
> BY THE COURT: Wait a minute now.
> BY MR. KILGORE: Oh. I'm sorry.
> BY MR. KILGORE: Your Honor, we'd like to reflect on the record that the victim in this case is not Caucasian. She's - - is she?
> BY MR. BROOKS: I don't know.
> BY MR. KILGORE: She doesn't look caucasian.
> BY UNIDENTIFIABLE FEMALE: She's latino.
> BY MR. KILGORE: Latino, Your Honor. Therefore, Batson does not qualify in this case as to white jurors.
> BY THE COURT: How about that? You're saying that - - uh - - Batson does not apply to a hispanic?
> BY MR. KILGORE: Yes, Your Honor, as far as white jurors go, striking African American jurors. It's minorities, Your Honor, not white and black. It's minorities.
> BY THE COURT: I'm going to be cautious. Give me a racially neutral reason.
> BY MR. KILGORE: Your honor, on Spivey it's - - uh - - we - - he was struck because - - uh - - his - - uh - - occupation. He's - - uh - - unemployed, also has an unemployed wife. Uh - - we thought at that point that given the nature of this crime, a fraud case dealing with

> where monies were stolen, that he would not be a - - the fairest juror.
> BY MR. BROOKS: Your Honor, twenty-nine years old, unemployed, and his wife's unemployed.
> BY MR. KILGORE: With a child, Your Honor.
> . . . . . .

and (T-32)

> BY THE COURT: I feel that the racial neutral reason offered by the State regarding Spivey is a racial neutral reason, but I'm going to permit you to call in the juror Stingley for examination.

Appellant and venireman Spivey are African American. In Wylie v. Vaughn, 773 F. Supp. 775, 777 (E. D. Pa. 1991) the Court considered whether a juror's unemployed status was a permissible ground or a racially neutral reason for a peremptory challenge and held as follows:

> Although it appears that the trial judge made a fair determination as to the reasons behind the use of the peremptory strike against the African American jurors, that a person is unemployed, is not a plausible reason for striking a venire person. Moreover, while this court recognizes that a trial court need not determine whether the reasons proffered for a peremptory challenge rise to he level of a challenge for cause, the trial court must also consider the impact that its decision will have on the opportunity for a minority defendant to be tried by a jury drawn from a cross section of the community . . . Because there is a far greater percentage of unemployed minorities than there are unemployed persons in the general population, giving prosecutors carte blanche to strike jurors simply because they are unemployed creates a far smaller pool of potential minority jurors. Such a practice allows for discrimination which may result in a denial of equal protection to minority defendant.(Emphasis supplied.)

Thus, the strike of a venireperson because he or she is unemployed is impermissible, because the reason for the strike is not racially neutral. Where the

Defendant and venireperson are both African American, the challenge is a denial of his or her rights under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

In the case before the Court, the trial court erred in approving as racially neutral, the State's explanation that venireman Spivey had been peremptorily challenged because he was unemployed.

The verdict should be overturned.

II.

THE COURT ERRED IN OVERRULING APPELLANT'S BATSON OBJECTION TO THE STATE'S PREEMPTORY CHALLENGE OF VENIREWOMAN STINGLEY

In Batson v. Kentucky, 476 U.S. 79, 89, 106 S. Ct. 1712 (1986) the U.S. Supreme Court held that:

> the Equal Protection Clause forbids the prosecutor to challenge potential jurors solely on account of their race or on the assumption that black jurors as a group will be unable impartially to consider the State's case against a black defendant.

Appellant and venirewoman Stingley are both African American.

At trial in the case before the Court, Appellant raised a Batson objection to the State's peremptory challenge of venirewoman Charolotte Stingley, after the State had issued other challenges and selected 12 jurors for the Court to consider, the Court examined the Batson objections, and required the State to provide a racially neutral reason for striking Ms. Stingley (T-30):

> BY THE COURT: What's your reason for Stingley?

BY MR. BROOKS: Your Honor, Antonio Stingley is a defendant in a case we have next week, and we understand they are related.
BY THE COURT: Criminal case?
BY MR. BROOKS: Yes

and the following colloquy resulted (T-30, 31):

BY THE COURT: Do you dispute the racially neutral reason offered by the defendant - - by the State regarding the juror, Stingley?
BY MR. SMITH: No. There's - - well, Your Honor, I - - I would ask if she could be called in here so that she could be voir dired as to how closely related she is to the defendant next week. If she is related to him, then - - - then I wouldn't object to that.
BY THE COURT: Your talking about Stingley?
BY MR. SMITH: Yes sir. I think their race - -
BY THE COURT: Reason they gave to strike Stingley is because he's the defendant in a pending criminal case.
BY MR. BROOKS: No, sir. She's related.
BY MR. KILGORE: She's related.
BY MR. BROOKS: We understand she's related to Antonio Stingley.
BY MR. KILGORE: Yes, sir.
BY MR. SMITH: Your Honor, if they're tenth cousins twice removed, that'll be different than if they were brother or sister, nephew, aunt relationship.

The colloquy on Stingley continued (T-32 to T-34):

BY THE COURT: I feel that the racial neutral reason offered by the State regarding Spivey is a racial neutral reason, but I'm going to permit you to call in the juror Stingley for examination.
BY MR. SMITH: Yes, sir.
BY THE COURT: To determine whether or not she is qualified as a juror.
BY MR. SMITH: Yes, sir.
BY MR. BROOKS: Your Honor, we would object to him calling.
BY MR. SMITH: I'm going to get Mr. Dunigan to call her.
BY MR. BROOKS: Get the deputy or somebody to call her in.
BY MR. SMITH: Yes. I'm going to get Mr. Dunigan to bring her back here. I'm not going to.
(BRIEF PAUSE IN THE PROCEEDINGS)
JUROR CHAROLOTTE STINGLEY IS BEFORE THE COURT.
BY THE COURT: How you doing? Uh - - Ms. Stingley, you've not done anything wrong now, but this is a legal proceeding what we're

undertaking so don't you be concerned about you having done anything wrong, so. But the lawyers do have some questions regarding your qualifications as a juror in this particular case.
BY MS STINGLEY: Okay.
BY MR. SMITH: Would you like for me to wait for Robert to get back, Judge?
BY THE COURT: There's another lawyer here.
BY MR. SMITH: Yes, sir. I'll go right ahead. Ms. Stingley, you live at 918 East 7th Street in Forest?
BY MS. STINGLEY: Yes.
BY MR. SMITH: Yes, ma'am. And - - uh - - are you related to someone that is a defendant, I believe next week, in a case - - in a criminal case? The prosecutors believe that you were.
BY MR. STINGLEY: I am not.
BY MR. SMITH: Robert, what was the person's name?
BY MR. KILGORE: Antonio Stingley.
BY MR. BROOKS: Lives on Steadman Road in Morton.
BY MS. STINGLEY: Probably so. We probably are going to be related because I have - - I mean, I'm not for sure, but I know I have - - I'm related to some Stingleys in Morton.
BY MR. SMITH: Now, are you married into the Stingley, or is that - - that your - - your - -your given name?
BY MS. STINGLEY: Yes.
BY MR. SMITH: Okay. But you don't know Antonio Stingley?
BY MS. STINGLEY: Unh-unh. I'm not familiar with him.
BY MR. SMITH: Okay.
BY MS. STINGLEY: I mean, I've heard of him, but, like I say, I'm not going to be for sure.
BY MR. SMITH: Would - - would that affect your decision in this case? If you - - if you were related to him, would that affect your ability to decide in this case one way or another?
BY MS. STINGLEY: No.
BY MR. SMITH: Okay. That's all the questions I have, Judge.
BY THE COURT: Got any questions?
BY MR. KILGORE: No, Your Honor.
BY THE COURT: Ms. Stingley, you can go back in the Courtroom.
BY MR. SMITH: Thank you , Ms. Stingley.
BY MS. STINGLEY: Of course.
BY THE COURT: Of course, what has happened, you have now developed her knowledge that she is related to a criminal defendant, and the State has offered that as a reason to - - uh - - exercise the challenge so I'm going to permit the challenge.

The Court's holding that venirewoman Stingley's kinship to Antonio Stingley was established was clearly erroneous, because she did not know whether such a relationship existed. Thus, the State had no reason to provide for the challenge, racially neutral or otherwise. The Court's approving the peremptory challenge was error because the ground for the challenge was untrue and the ruling was a denial of Appellant's rights under the Equal Protection Clause of the Fourteenth Amendment to the U. S. Constitution.

The verdict must be overturned.

III.

THE COURT ERRED IN ADMITTING APPELLANT'S ALLEGED STATEMENT INTO EVIDENCE

The primary evidence against Appellant was a statement offered by the prosecution.

Appellant admitted she had signed a statement handwritten on a legal pad by one of the police officers. She testified that its content and substance were entirely different from the typewritten confession offered by the prosecution. She denied that she had signed the typewritten statement offered by the prosecution (T-76).

In the Jackson-Denno hearing on Appellant's motion to suppress Appellant's statement, Appellant testified (T-74, 75):

> Q. What did they say to you before your statement?
> A. Officer - - uh - - Roncali said that you might as well go ahead and tell us the truth and give us a statement because your sister has already gave us a statement, and we got the facts sitting right here, and you might as well go ahead and give a statement.

Q. Did they tell you it's be lighter on you that - - if you would give a statement?
A. He told me it would be better for me. He didn't say lighter. He just used the word better.

Appellant's resulting statement was thus involuntary. A confession to be admissible must be voluntary, and not as the result of any promises, threats or other inducements. The Mississippi Supreme Court condemns the practice by law enforcement officials conveying to a suspect the impression, however slight, that cooperation by the suspect may be of some benefit. Abram v. State, 606 So. 2d 1015 (Miss. 1992); Dunn v. State, 547 So. 2d 42 (Miss. 1989); Layne v. State, 542 S. 2d 237, 240 (Miss. 1966).

The policeman's statement in the case before the Court that it would be better for Appellant if she confessed is similar in meaning to representation condemned in these cases that it would be a suspect's benefit if he or she confessed.

The verdict should be overturned.

IV.

THE VERDICT IS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE

The primary evidence against Appellant was a statement offered by the prosecution.

Appellant admitted she had signed a statement handwritten on a legal pad by one of the police officers. She testified that its content and substance were entirely different from the typewritten confession offered by the prosecution. She denied that she had signed the typewritten statement offered by the prosecution (T-76).

The statement promulgated by the state read as follows (T-93, 94):

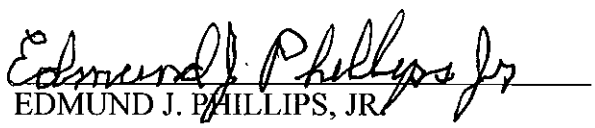
> It says, "I, Loretha Murray, am giving this statement freely and voluntarily to Officers Will Jones and Robert Roncali who have identified themselves to me as law enforcement officers of the Forest Police Department." The statement reads as, "It was on a Tuesday. This particular day me, Leslie, and my son went to Lackey Hospital to see Doctor Carter. I checked in and went in a waiting room. It wasn't long, and they took me to the room to be seen. We waited in the room for Doctor Carter. After he saw me and gave me my prescription, we left the room and walked down the hall. Leslie got on the side of me and said, there's a wallet in there. She said, I ought to give - - excuse me - - she said, I ought to get it. She turned around and went into the room. I was still in the hallway. She came back out and went to the car. When we were in the car, she showed me the wallet. She said, I don't know about these credit cards because I just got in trouble about this. I told her that you can't get no cash off a card without a PIN number. She said she wanted to go to Dollar General to get a perm. We then headed to Dollar General. On the way to Dollar General, I called my mom, Sharon Caleefa, in Augusta, Georgia, and told her that we found a credit card. I told her that I didn't have a PIN number to get cash off the card or off of it, and she told me to buy something and return it. I told her that when you do that, they just put the money back on the card. I handed Leslie the phone, and she started talking to my mother. I remember Leslie telling me that my mom was telling her different ways to use the card without a PIN number. Leslie said that my mom said that you can wire the money. She said that you can wire the money to yourself. Leslie said to call Western Union. I made the call to Western Union and asked them if you could use a credit card to wire money. The person said that you can use a credit card to wire money. I gave Leslie the phone because I was driving. She had the wallet in her lap, and she put the phone on speaker phone. I could hear the automated service instructing on the information needed. When it asked for the dollar amount, Leslie looked at me, and I said don't go crazy. Leslie looked at me and said, one thousand? I nodded my head 'yes'. At some point a real person came on the phone and was asking some questions. Leslie was answering the questions, and when she asked - - when she was asked questions that she did not know the answers to, I answered them. When the call was finished, I called my mom back and let Leslie talk to her. She gave her the confirmation number."

The acts constituting the offense were committed by Leslie Lashika Lay and she (Lay) received the rewards of the crime. Appellant did not actively participate in the crime. Some degree of active participation in a criminal act must be shown to establish criminal liability. Proof that one has stood by at the commission of a crime without taking steps to prevent it does not establish participation in the wrong done, although he approves of the act. Cochran v. State, 191 Miss. 273, 2 So. 2d 822 (1941); Pryor v. State, 239 So. 2d 911 (Miss. 1970).

CONCLUSION

The verdict should be overturned.

RESPECTFULLY SUBMITTED,

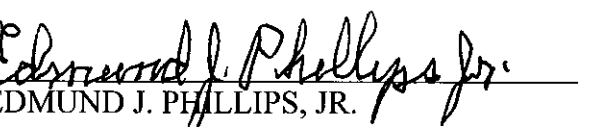


EDMUND J. PHILLIPS, JR.
Attorney for Appellant

CERTIFICATE OF SERVICE

I, Edmund J. Phillips, Jr., Counsel for the Appellant, do hereby certify that on this date a true and exact copy of the Brief for Appellant was mailed to the Honorable Mark Duncan, P.O. Box 603, Philadelphia, MS 39350, District Attorney, the Honorable Marcus D. Gordon, P.O. Box 220, Decatur, MS 39327, Circuit Court Judge and the Honorable Jim Hood, P.O. Box 220, Jackson, MS 39205, Attorney General for the State of Mississippi.

DATED: January 23, 2009.



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