IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ANDRETTI CAMPER — APPELLANT

VS. — NO. 2008-KA-1865

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

Procedural History

Andretti Camper was convicted in the Circuit Court of Simpson County on a charge of aggravated assault and was sentenced to a term of eight years in the custody of the Mississippi Department of Corrections. (C.P.37) Aggrieved by the judgment rendered against him, Camper has perfected an appeal to this Court.

Substantive Facts

Tony Edwards testified that on April 16, 2006, he went to his mother's house in D'Lo. At one point he ran "up the street to a little café." While he was "standing outside," the defendant or "somebody driving his car" drove "across the tracks." Edwards "backed him down and the car stopped." After Edwards "walked up to the car," he saw that the defendant, Andretti Camper, was

sitting in the passenger's seat. (T.55-56) Edwards recounted the ensuing events with testimony reprinted below in pertinent part:

> I asked him, you know, about– he was going around telling people that I was Uncle Tom, you know, a snitch. I worked with the police and, you know, this and that. And I asked him, you know, I said, Andretti, you know, they tell me, you know, you going around badmouthing me or whatever. ... [H]e siad, well, no I didn't say that. I said, well, you said it. He said, No, I didn't. I said, well, Gerrick ... which would be a friend of ours, said you said it. And he said, No. Let me get him on the phone. He pretended he was getting him on the phone, which he didn't. And I said, Well, don't even worry about it. Just squash that. We're gonna leave that alone. Just keep ... my name out of your mouth. He then proceeded and said, What if I don't? And I open-handed him, you know, hit him in the face.
>
> (T.57)

After Edwards administered "just one slap," he "turned" and walked a "step or two." (T.57, 71) Camper "stuck the gun out the window" and shot Edwards "in the side." Edwards "walked ... down the hill and got in the car" with his cousin, who drove him to Simpson General Hospital. (T.57-59)

The treating physician testified that Edwards had been wounded "at the right abdominal abdomen." Edwards was treated with an antibiotic and a tetanus shot. The doctor characterized the wound as a serious bodily injury. (T.73-75)

Deputy Bernard Gunter of the Simpson County Sheriff's Department testified that on the day in question, he was called to the Simpson General Hospital "in reference to a shooting ... " After speaking with the attending physician, Deputy Gunter interviewed Edwards, who told him that Andretti Camper had shot him "over on Jupiter Road in Simpson County." Thereafter, Deputy Gunter went to the scene of the crime and recovered "a .9 millimeter shell casing." (T. 51-52)

Camper testified that on April 16, 2006, Easter Sunday, he and a "female friend" were "on the way to church" when Edwards "approached the front of the vehicle and stopped the car." Edwards became "real argumentative" and "exhibit[ed] a weapon." Ultimately, Edwards "reached in" Camper's vehicle and "assaulted" him. The men "tussled a little bit"; Camper "reached for the gun and ... grabbed him"; and they "tussled for the gun." According to Camper, "The gun went off and I hit him ...[o]n his side." (T.86-88)

Precious Ross, who was dating Camper at the time, testified that she was driving the car when Edwards flagged them down. Edwards "walked behind the car on Andretti's side" and the men began to argue with each other. Subsequently, Ms. Ross heard "a slap and a gunshot... a few seconds apart." At that point, she "drove off." (T.96-98)

During the defendant's case, Edwards acknowledged that he had recanted testimony which he had given in an unrelated case. (T.84-85)

SUMMARY OF THE ARGUMENT

Camper failed to present the trial court with a basis for a finding of pretext for racial discrimination with respect to the state's exercise of peremptory challenges to prospective jurors James Warren, Annette Lampton, and Salrina McLaurin. The reasons proffered by the state were racially neutral on their face, and the court properly concluded that the defense failed to offer meaningful factual or legal rebuttal. Accordingly, no error can be shown in the court's allowance of the strikes. Moreover, Camper is not entitled to a new trial on the ground the verdict is against the overwhelming weight of the evidence. This case presented a straight issue of fact which was properly resolved by the jury.

PROPOSITION ONE:

CAMPER FAILED TO PRESENT THE TRIAL COURT WITH A BASIS FOR A FINDING OF PRETEXT FOR RACIAL DISCRIMINATION WITH RESPECT TO THE STATE'S EXERCISE OF PEREMPTORY STRIKES OF PROSPECTIVE JURORS JAMES WARREN, ANNETTE LAMPTON, AND SALRINA McLAURIN

Camper first contends the trial court erred in accepting the prosecution's racially neutral reasons for striking potential jurors James Warren, Annette Lampton, and Salrina McLaurin. This argument implicates the following, which was taken during the jury selection process:

> THE COURT: Number 10, James E. Warren. Race, gender reason.
>
> MR. OGBURN: Yes, Your Honor. I think Mr. Warren looked disinterested and he looked kind of sleepy. The State would also state that Mr. Warren lives in a known drug area, being Bill Womack Road.
>
> **THE COURT: Are you excusing white jurors who live in that area?**
>
> **MR. OGBURN: I didn't see anyone else who lived on that road, Your Honor.**
>
> **THE COURT: Okay. It's your obligation to point it out, if he does, Mr. James.**
>
> **MR. JAMES: Okay.**
>
> MR.OGBURN: And this is an African-American male?
>
> MR. OGBURN: Yes, Your Honor.
>
> THE COURT: Okay. Any argument or evidence to rebut that?
>
> MR. JAMES: Your Honor, that part of the disinterested, I watched him and I didn't see that he looked disinterested. As far as where he lives being a drug area, I have no idea.

THE COURT: Well, I don't know if it is or not. But that's not the issue. **The issue is if we're excluding all whites also that live within suspected drug areas. If you can show me that he is not excusing white jurors for that reason, I'll allow this to stand as a race, gender, neutral reason.**

(emphasis added) (T.35-36)

With respect to the prosecution's strike of potentials juror Annette Lampton and Salrina McLaurin, the following was taken:

MR. OGBURN: Yes, sir. She [Ms. Lampton] did look disinterested and she had her hands crossed during the voir dire procedure.

MR. JAMES: Well, I don't think that's enough to– I saw her too, and I didn't notice that. And I don't think that's nearly enough.

THE COURT: Are you striking all white jurors who appeared disinterested and had their hands crossed?

MR. OGBURN: Yes, sir, the ones that had their hands crossed.

THE COURT: Your reasoning being bad body language?

MR. OGBURN: Yes, Your Honor.

THE COURT: All right. **Without anything to rebut that, I will accept that as a race, gender, neutral reason.**

Number 15, Salrina McLaurin.

MR. OBGURN: Your Honor, Ms. McLaurin looked kind of sleepy. She wasn't paying attention. And she was – you know.

MS. TYSON: Plus, her body language of being sleepy.

THE COURT: Anything to rebut it?

MR. JAMES: All right. Again, I saw it and I don't think that it was bad body language. I'd like to know what white jurors they're striking that had bad body language as well.

THE COURT: Well, they've not stricken any white ones yet.

MR. JAMES: That's right.

THE COURT: So I think bad body language is a pretty subjective thing. Inattentiveness, the supreme court has said, is a permissible reason provided it's equally applied. **In absence of any evidence to the contrary, I accept it as a race, gender, neutral reason.** The objection will stand– or the strike will stand.

(emphasis added) (T.36-38)

The Mississippi Supreme Court recently reaffirmed that with respect to *Batson* determinations,

> [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).... "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. [citations omitted] Our standard conforms to that recently enunciated by the United States Supreme Court. "On appeal, a trial court's ruling on the issue of discriminatory intent must be sustained unless it is clearly erroneous" [footnote omitted] *Snyder v. Louisiana*, ---U.S. ----, ----, 128 S.Ct. 1203, 1207, 170 L.Ed.2d 175, 185, 2008 U.S. LEXIS 2708 at *21 (2008).
>
> *Booker v. State,* 5 So. 3d 356, 357-58 (Miss.2008)

As shown by the foregoing excerpt from the trial transcript, the court carefully considered the defendant's objections and the prosecution's reasons[1] for the strikes in

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[1]Living in a "high crime" area, body language and inattentiveness have been recognized repeatedly as racially neutral reasons for the exercise of peremptory strikes. *Hicks v. State*, 973 So.2d 211, 220 (Miss. 2007)

question. Ultimately, having determined that the defendant had failed to offer any meaningful factual or legal rebuttal to the reasons proffered, the court allowed the strikes.[2] The state submits the defense has failed to demonstrate that these findings are clearly erroneous. To carry his burden of showing that the state exercised its peremptory challenges in a discriminatory manner, the defendant should have argued the alleged "disparate treatment" between minority and non-minority jurors in making out his prima facie case and in rebuttal. *Aguilar v. State*, 847 So.2d 871, 877-78 (Miss. App. 2002),citing *Sewell v. State*, 721 So.2d 129, 136 (Miss.1998). Because he did not, it follows that he clearly failed to sustain his burden.

It should be remembered that "[t]he ultimate burden of persuasion regarding racial motivation rests with, and never shifts from, the opponent of the strike." *Purkett v. Elem*, 514 U.S. 765, 768 (1995), quoted in *Thomas v. State*, 818 So.2d 335, 345 (Miss.2002). Accord, *Chamberlin v. State*, 989 So.2d 320 , 339(Miss.2008). On this record, no basis exists for disturbing the court's findings that the strikes were not racially motivated. Camper's first proposition should be denied.

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[2] Where the defense fails to offer rebuttal, "the trial judge may base his decision only on the reasons given by the State." *Coleman v. State*, 697 So.2d 777, 786 (Miss.1997), quoted in *Woodward v. State*, 726 So.2d 524, 533 (Miss.1997). Where, as here, the defense does not attempt to refute the state's reasons, no genuine factual issue is created. Under these circumstances, the court's findings were adequate under *Hatten*. *Kohlberg v. State*, 829 So.2d 29, 86 (Miss. 2002); *Spann v.* State, 771 So.2d 883, 903 (Miss. 2000).

PROPOSITION TWO:

THE COURT DID NOT ERR IN DENYING CAMPER'S MOTION FOR NEW TRIAL ON THE GROUND THE VERDICT WAS CONTRARY TO THE OVERWHELMING WEIGHT OF THE EVIDENCE

Camper finally argues that he is entitled to a new trial on the ground the verdict is against the overwhelming weight of the evidence.

This rigorous standard applies to the claim that the defendant is entitled to a new trial:

> A motion for a new trial is within the sound discretion of the trial judge, who may grant a new trial if the verdict is contrary to the law or the weight of the evidence or is required in the interest of justice. [citations omitted] In determining whether the verdict was against the overwhelming weight of the evidence, we must accept as true that evidence which supports the verdict. Reversal will be had only when we are convinced that the trial court abused its discretion in denying the motion. [citations omitted] We will not order a new trial unless we are convinced the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would be to sanction an unconscionable injustice. [citations omitted]
>
> *Rogers v. State*, 796 So.2d 1022, 1029-30 (Miss.2001).

"Any less stringent rule would denigrate the constitutional power and responsibility of the jury in our criminal justice system." *Hughes v. State*, 724 So.2d 893, 896 (Miss.1998). Because "juries are impaneled for the very purpose of passing upon such questions," this Court does not "reverse criminal cases where there is a straight issue of fact, or a conflict in the facts..." *Evans v. State*, 159 Miss. 561, 566, 132 So. 563, 564 (1931), quoted in *Thomas v. State*, 812 So.2d 1010, 1014 (Miss. App. 2001).

The state incorporates by reference the evidence recounted under its Statement of Substantive Facts in asserting that the proof is not such that reasonable jurors could have returned no verdict other than not guilty; nor is it such that to allow the verdict to stand would be to sanction an

unconscionable injustice. Edwards admitted that he slapped the defendant, but went on to testify that after he (Edwards) turned and took a step or two away, the defendant shot him in the side. Camper's testimony to the contrary simply created an issue of fact for the jury. See *Vaughn v. State*, 926 So.2d 269 (Miss. App. 2006).

CONCLUSION

The state respectfully submits that the arguments presented by Camper have no merit. Accordingly, the judgment entered below should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Deirdre McCrory, 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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