

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

EDDIE RAY JONES

APPELLANT

VS.

NO. 2010-KA-00202-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF APPELLANT

STAN PERKINS
Attorney for the Defendant-Appellant
Post Office Box 291
Greenville, Ms. 38702-0291
Miss. Bar No. 4120
Telephone No. 662-335-2667

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CERTIFICATE OF INTERESTED PERSONS

The undersigned Counsel of Record hereby certifies that the following listed persons have an interest in the outcome of this Appeal. These representations are made in order that the Justices of this Court may evaluate possible disqualifications or recusal.

EDDIE RAY JONES, Appellant;

STAN PERKINS, Attorney for the Appellant;

BRENDA MITCHELL, District Attorney and LESLIE FLINT,
Assistant District Attorney of the Second Circuit
Judicial District of the State of Mississippi, Attorney for the
Appellee

STAN PERKINS, ESQ. and JOHNNY WALLS, ESQ., Trial Counsel for
Appellant

HON. ALBERT B. SMITH, III.; Presiding Circuit Judge of the Fourth Circuit
Judicial District of the State of Mississippi.

WITNESSES: TYNEISHA TAYLOR, JOYCE RUSSEY, LAKENDRICK
MCCLINE, AKEEMIA JONES, FRANK EDWARDS, MICHAEL
WHITTEN, CEDRIC HAMPTON, LATOYA SELLERS, DR. VERNON
MITCHELL, CAMISHA CLEVELAND, GEORGE SERIO, VIRGINIA
HUNTER.

Respectfully Submitted,
EDDIE RAY JONES

By: 

STAN PERKINS

Attorney for Appellant

Miss. State Bar No. 

Post Office Box 291

Greenville, MS 38702-0291

Telephone: (662) 335-2667

STATEMENT REGARDING ORAL ARGUMENT

The facts and legal arguments are adequately presented in the brief and record, and the decisional process would not be significantly aided by oral argument.

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STATEMENT OF THE ISSUES

I.

WHETHER THE COURT ERRED IN TELLING THE JURY THAT THE DEFENDANT HAD A PRIOR CONVICTION FOR SALE OF COCAINE.

II.

WHETHER THERE WAS SUFFICIENT EVIDENCE TO SUSTAIN THE DEFENDANT'S CONVICTION IN COUNT ONE.

STATEMENT OF THE CASE

Eddie Ray Jones was indicted along with his co-defendant, Henry Taylor, for an aggravated assault that allegedly occurred in Cleveland, Mississippi on March 22, 2007. In the indictment handed down by a Bolivar County Grand Jury, Jones and Taylor were accused in Count One of "individually or while aiding and abetting and/or acting in concert with each other, purposely, knowingly or recklessly, under circumstances manifesting extreme indifference to the value of human life, cause serious bodily injury to Camisha Cleveland, by shooting into the street or traffic." (R.E. 6)

Jones was additionally indicted for Possession of a Firearm by a Convicted Felon, having "previously been convicted of the felony crime of sale of cocaine." (R.E. 6-7) The State prosecuted Jones as an habitual offender under Section 99-19-81 of the Mississippi Code of 1972,

as amended. (R.E. Page 8) Additionally, Taylor was charged in Count Three with Possession of a Firearm by a Convicted Felon, having previously been convicted of the felony crime of Possession of Marijuana. (R.E. Page 7)

Trial was held on May 19, 2008 before the Honorable Albert B. Smith, III. When making inquiry whether any of the potential jurors had heard about the case, Judge Smith read Count Two to the jury pool but instead of merely saying that Eddie Ray Jones was charged with possession of a firearm by a convicted felon, his Honor told the Jury that Jones “ had been previously convicted of the felony crime of sale of cocaine.” (T. Vol.2, Pages 47-48) Defense Counsel immediately asked to approach the bench and moved for a mistrial. (T. Vol. 2, Pages 48-49) The Court denied the motion and then, over Taylor’s attorney’s objection, informed the jury that Taylor had previously been convicted of sale of marijuana, which the Judge corrected and stated was “possession of marijuana.” The Court, in addition, restated to the Jury that Jones was a convicted felon of the sale of cocaine.” (T. Vol. 2, Pages 51-53) The appellant’s first assignment of error involves the manner in which the Court handled the prior convictions of the two Defendants. A mistrial should have been granted.

After the case was heard, Eddie Ray Jones was found guilty of aggravated assault but was acquitted of Count Two, despite having stipulated that he was a convicted felon. (T. Vol.3, Page 247) (R.E. Page 10) In other words, the Jury found that Jones **did not** possess a firearm. The Jury did, however, convict Henry Taylor of Count Three, Possession of a Firearm by a Convicted Felon in addition to Count One, Aggravated Assault. (R.E. Page 10) Eddie Ray Jones was sentenced to the maximum of twenty (20) years because of his habitual offender status. (R.E. 21-22)

The Appellant’s second assignment of error focuses on whether there was sufficient

evidence to support the Jury's conviction of Jones for aggravated assault. Specifically, he asserts there is insufficient evidence in this case to support the State's claim that Jones "aided and abetted" Taylor in the commission of the aggravated assault. A close look at the evidence produced at trial reveals the following: Frank Edwards testified that a large crowd of people were walking west on White Street from a park toward Highway 61. (T. Vol. 2, Pages 100-105) He had heard that Eddie Ray Jones and Main Taylor (Henry) was into it with his two boys. (T. Vol. 2, Page 100) In the crowd, he saw Taylor walking about twenty to thirty yards ahead of Jones. (T. Vol. 2, Page 109) He did not see Jones with a gun. (T. Vol. 2, Page 108) He heard five to seven shots. (T. Vol. 2, Page 101) He saw Taylor with a gun but did not see him fire it. (T. Vol. 2, Page 101) He was upset when he told the investigator that he might have seen a gun in Eddie Ray's hand. (T. Vol. 2, Page 101) There was cars "packed" on the street, too. (T. Vol. 2, Page 105)

Michael Whitten, an employee of a liquor store on Highway 61, was about forty to fifty yards away when he saw something "shiny," like a pipe or a bat, in Henry Taylor's hand. He had heard five to seven shots and saw a crowd running toward the Double Quick. He did not see Jones in the crowd. (T. Vol. 2, Pages 119-122)

Cedrick Hampton testified he was mad when he spoke to the police. He recanted his prior unsworn statement about seeing Eddie Ray Jones with a gun and when asked about a rivalry between the Bay Area and Johnson Street, he did not name any individuals but merely stated that Jones "probably" lived on Johnson Street. (T. Vol. 2, Page 134-135) He further testified on redirect that he "didn't see what was going on because I was at my house two or three blocks away." (T. Vol. 2, Page 141)

Latoya Sellers testified she was driving toward the park on White Street with a passenger

named Maurice Williams. A lot of people were walking down the road toward the highway. (T. Vol. 2, Page 144) She heard someone say "...there go that ..." and gunshots erupted. Her car was struck by a bullet in the back. (T. Vol. 2, 146-147) She said she saw Eddie Ray with a gun. (T. Vol. 3, Page 152) She had to stop because of the congested traffic and her passenger, Maurice Williams, got out and said "What did you say?" When asked who he was talking to, Sellers said "I guess Eddie Ray," at which time an objection was sustained as to speculation. (T. Vol.3, Pages 152-153) Sellers then stated she heard only one shot. (T. Vol. 3, Page 154) On cross-examination, Sellers admitted she told the police in her first statement that she "didn't see who did the shooting." (T. Vol.3, Page 159) She also laughed on the stand when she was asked if she lied to him (policeman) and said "The first time, I really didn't want to get up in this." (T. Vol.3, Page 159)

On further cross-examination, Sellers could not describe what Jones was wearing or what the gun looked like. She further explained that she saw him by "glancing" in the rear-view mirror. (T. Vol.3, Page 160) She admitted also that she was "told Eddie Ray's name." (T. Vol.3, Page 161) She, additionally, stated that while she didn't tell the police that her passenger had jumped out of her car with a gun in her first two statements, he did do so on the date in question. (T. Vol.3, Page 162) She further testified he jumped out and said something to Eddie Ray. (T. Vol. 3, Page 168) She acknowledged that she told the police in a third statement that "she heard gunshots" but didn't mention anything about seeing gunshots. (T. Vol. 3, Page 171)

Under cross-examination from Taylor's attorney, Sellers stated somebody in that crowd said "There go that weak n.....r right there." (T. Vol. 3, Page 173) She admitted on re-direct examination that the police asked her did she "see Eddie Ray with a gun." (T. Vol.3, Page 182)

Dr. Vernon Mitchell testified next that he treated Camisha Cleveland for a gunshot wound

she received that day. Cleveland testified she was driving west on White street when she was struck by a bullet that cut her ear. She did not see who shot her. (T. Vol.3, Page 196) Investigator Serio testified that Timothy Porter came forward and confessed he was the shooter in his second statement. (T. Vol. 3, Pages 214-215) Serio also confirmed that Jones denied doing any shooting. He further stated no gun was recovered and a gunshot residue test of Jones came back negative. (T. Vol. 3, Page 223)

The last witness for the State's case-in-chief was Virginia Hunter, Frank Edwards' niece. She testified that she had "seen a lot of people coming up the streets loud and talking." (T. Vol.3, Page 237) "Somebody said Main Taylor had a gun." (T. Vol. 3, Page 237) She then testified she saw Taylor with a gun and pointed him out in the courtroom. (T. Vol. 3, Page 237) She did not recognize Jones or remember seeing him. (T. Vol.3, Page 240) On cross-examination, she told Taylor's counsel she "saw something shiny and assumed it was a gun and she didn't see that gun fired." (T. Vol.3, Page 242) After the State rested, both defendants moved for directed verdicts which were denied. (T. Vol. 3, Pages 248-252)

The Defendants presented several witnesses. First was Tyneisha Taylor, Eddie Ray's 16 year old niece at the time. (T. Vol.3, Page 255) She testified Eddie Ray was not armed and that when they heard a lot of commotion she turned around and saw Maurice Williams getting out of a vehicle and pointing. (T. Vol. 3, Page 256) She said she took off running and Eddie Ray scooped her up after she was losing a flip-flop. (T. Vol.3, Pages 256-257) She admitted Taylor was in the group that left the park and was her cousin. (T. Vol.3, Pages 258, 260)

The next defense witness was Joyce Russer. She testified that when the shooting started, she saw Eddie Ray running with his niece and his baby and that he put the baby into a passing car

and ran across the highway with his niece. (T. Vol. 3, Pages 264-265) She further stated that two guys beside her car were shooting at a guy in the white car. (T. Vol.3, Page 265) Neither Taylor nor Jones were shooting, they were only running. (T. Vol. 3, Page 266-267) Little Tim and Little Wayne were shooting at the white car. (T. Vol.3, Page 269) She admitted she was Eddie Ray's Aunt but wouldn't lie for him. (T. Vol. 3, Pages 268, 277)

The next defense witness was Lakendrick McCline. He testified he was with Eddie Ray and Main Taylor when the shooting started and they all took off running. He further stated that neither of them had a gun nor said anything right before the shooting. (T. Vol. 3, Page 277-280) Under cross-examination, he admitted his mom had a child by Eddie Ray Jones. (T. Vol. 3, Page 281)

The last defense witness was Akeemia Jones. She testified she was walking with others in the group when Maurice Williams jumped out of his car and started shooting. She further stated that Timothy Porter shot back. (T. Vol.3, Page 289) She said Jones had his five (5) year old daughter with him at the time the shots were first fired. (T. Vol.3, Page 291) She admitted to being Taylor's cousin. (T. Vol.3, Page 295)

After the Defense rested, the State recalled Investigator Serio who testified that Timothy Porter denied being involved in the shooting the first time he talked with Serio. (T. Vol. 3, Page 297) After Serio's testimony, the State rested. The Court refused the Defendant's peremptory instruction D-1.

SUMMARY OF ARGUMENTS

The Appellant raises two issues on appeal. The first issue is whether or not the lower Court erred when it informed the potential jury pool of Eddie Ray Jones' prior conviction for sale of

cocaine, not once but twice. Counsel's request for a mistrial should have been granted since the prejudice could not be undone.

The next assignment of error focuses on the sufficiency of the evidence that Jones was guilty of aggravated assault. Even utilizing the State's jury instruction explaining that a defendant may be found guilty by associating himself in some way with the crime, no reasonable jury could find beyond a reasonable doubt that a definitive nexus existed between Jones and Taylor that amounted to aiding and abetting or a joint enterprise. At best, the State convicts Jones on a "birds of the same feather" doctrine.

ARGUMENTS

I.

WHETHER THE COURT ERRED IN TELLING THE JURY THAT THE DEFENDANT HAD A PRIOR CONVICTION FOR THE SALE OF COCAINE

Rule 11.03 of the Uniform Circuit Court and County Court Rules establishes the method by which Circuit Courts are to handle trials involving enhanced punishment. Implicit in this Rule is the understanding that Juries are not to hear details of a Defendant's prior conviction(s) for fear the information will prejudice the jury.

While, in this case, it is true that Eddie Ray Jones was charged with the crime of being a felon in possession of a firearm, the Court could have easily described the charge as simply that without further detail. Instead, the Court chose to describe not once, but twice the fact that Jones had previously been convicted of the Sale of Cocaine. Compound this with the fact that the Court also stated Defendant Taylor's prior conviction, over objection, and the Appellant contends he was irreparably prejudiced.

The Appellant relies on a recent ruling from this Honorable Court involving the same Trial Judge. In Williams v. State, 2009-KA-00900-COA (Miss. 2010), Williams' conviction for aggravated assault and felony possession of a weapon was overturned for precisely the same reason. Reversal of Jones' conviction in Count One, therefore, should follow.

II.

WHETHER THERE WAS SUFFICIENT EVIDENCE TO SUSTAIN THE DEFENDANT'S CONVICTION IN COUNT ONE

A peremptory jury instruction challenges the sufficiency of the evidence. Jefferson v. State, 818 So.2d 1099, 1110-11 (Miss. 2002) "The critical inquiry is whether the evidence shows beyond a reasonable doubt that the accused committed the act charged, and that he did so under such circumstances that every element of the offense existed." Bush v. State, 895 So.2d 836, 843 (Miss. 2005) In other words, the question before the Court is whether the evidence, when viewed in the light most favorable to the State, would cause any rational trier of fact to find beyond a reasonable doubt that the accused committed each and every essential element of the crime. Id.

In this case, the Appellant was acquitted of possession of a firearm by a convicted felon. It logically follows that the Jury did not find that Jones' possessed or fired a gun in this unfortunate incident. The State, presumably, will argue that Jones' aided or abetted someone (Taylor?) in the commission of the aggravated assault. The Court gave the State's Jury Instruction S-2 which tracks the language of Brassfield v. State, 905 So.2d 754, 756 (Miss. 2004) known as an "aiding and abetting instruction." The Appellant does not, however, find where the State presents any proof of his participation in the actual aggravated assault. There is no proof that Jones assisted the shooter or instructed the shooter to fire his weapon. At best, the State established that Jones might

have said something out loud that so bothered the other players as to result in gunfire. The proof regarding this point is weak, especially since the only witness, Ms. Sellers, stated under cross-examination that "someone in the crowd" said something.

The State relies on the fact that Jones and Taylor were part of a group or were in some way related. Mere association alone is not sufficient to support a conviction. See Davis v. State, 485 So.2d 1055 (Miss. 1986). Combined with the un-rebutted testimony that Jones was walking down the road with his five year old daughter at the time of the shooting and Jones' participation to a culpable degree in this crime is questionable at best. The requested peremptory instruction, therefore, should have been granted.

CONCLUSION

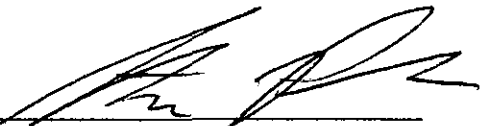
For the reasons cited above, reversal of the conviction of Eddie Ray Jones for aggravated assault is warranted.

RE: EDDIE RAY JONES
NO: 2010-KA-00202-COA

CERTIFICATE OF SERVICE

The undersigned Attorney of Record for the above Appellant does hereby certify that he has this date mailed by regular United States mail, postage prepaid, a true and correct of the foregoing Brief of Appellant to; Hon. Jim Hood, Attorney for the State of Mississippi at P.O. Box 220 Jackson, Ms. 39205; Hon. Leslie Flint, Assistant District Attorney for the Second District Court at P.O. Box 848 Cleveland, Ms. 38732; Hon. Albert Smith, III., Circuit Court Judge at P.O. Drawer 478 Cleveland, Ms. 38732 and the Appellant at Parchman Correctional Facility. Parchman, Ms.

This the 30th day of July, A.D., 2010.



STAN PERKINS
Attorney for the Appellant
Miss. Bar No. [REDACTED]
Post Office Box 291
Greenville, Ms. 38702-0291
Telephone No: (662)335-2667

CERTIFICATE OF COMPLIANCE

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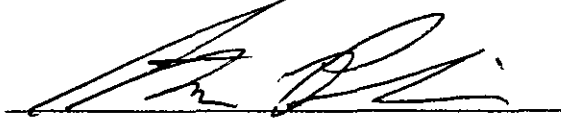
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