IN THE COURT OF APPEALS 09/17/96

OF THE

STATE OF MISSISSIPPI

NO. 93-KA-01327 COA

TYWASIKA SEALES

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. MARCUS D. GORDON

COURT FROM WHICH APPEALED: NESHOBA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

DONALD L. KILGORE

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: LAURA HOGAN TEDDER

DISTRICT ATTORNEY: KEN TURNER

NATURE OF THE CASE: POSSESSION OF COCAINE

TRIAL COURT DISPOSITION: FOUND GUILTY OF POSSESSION OF COCAINE AND SENTENCED TO SERVE TWO YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

BEFORE THOMAS, P.J., DIAZ, AND PAYNE, JJ.

DIAZ, J., FOR THE COURT:

Tywasika Seales (Seales) was found guilty of possession of cocaine by the Neshoba County Circuit Court. On appeal, Seales asserts two errors: (1) the trial court erred by not quashing the venire, and (2) the trial court erred by excluding two black jurors in violation of the *Batson* rule. Finding no error, we affirm.

FACTS

On April 15, 1993, officers L. J. Pace (Pace) and Tommy Waddell (Waddell) of the Philadelphia Police Department were on patrol. The officers were driving near the Philadelphia Apartments, a complex located on the west side of town. When passing in front of the apartment complex, officer Pace observed two black males walking away from the apartments. One of the men, later identified as Tywasika Seales, took a small object from his mouth and threw it to the ground. The officers parked the car and approached Seales. The officers proceeded to maneuver him back to the area where the object was located. Officer Pace retrieved a small plastic bag, covered with spittle, from the ground. The bag contained three rock-like substances which the officers suspected to be crack cocaine. Seales was arrested and subsequently tried for possession of cocaine by the Neshoba County Circuit Court.

DISCUSSION

1. Did the Trial Court Err by Not Quashing the Venire?

In the proceedings below, Seales made a motion to quash the venire, arguing that the racial composition of the panels did not accurately reflect the black population of Neshoba County. Specifically, that there were no black males on the panel and only three black females. In support of his motion to quash, he tendered an extract from the population statistics of Neshoba County from the last census. The census showed a black population of 18.59% in Neshoba County as of 1990. Appellant offered no further proof concerning this matter, and his motion was overruled.

The Sixth Amendment of the Constitution provides for a trial by an impartial jury. Although a defendant has the right to a jury chosen by nondiscriminatory methods, it does not mean the defendant has a right to a jury which mirrors the community and reflects the distinctive groups in the population. *Britt v. State*, 520 So. 2d 1377, 1379 (Miss. 1988).

The elements that must be proved to establish a prima facie violation of the fair cross-section requirement for an impartial jury were outlined in *Lanier v. State*, 533 So. 2d 473, 477 (Miss. 1988):

> 1. The group alleged to be excluded is a recognizable, distinct class in the community;
>
> 2. The degree of under representation must be proved, by comparing the proportion of the group in the total population to the proportion called to serve as grand jurors over a

significant period of time; and

3. This selection procedure is due to systematic exclusion of the group in the jury-selection process.

Seales' evidence was wholly insufficient to make a prima facie case that he was denied a trial by an impartial jury representing a fair cross-section of the community. There was no proof offered by Seales that the method of drawing venirepersons from Neshoba County was discriminatory, and thus, this assignment of error must fail.

2. Did the Trial Court Err in Excusing Two

Black Jurors in Violation of *Batson v. Kentucky?*

The use of peremptory challenges to exclude black venire members on the basis of race denies to the accused his right to a fair trial in violation of the due process clause and unconstitutionally discriminates against the excluded juror. *Batson v. Kentucky*, 476 U.S. 79, 86-87 (1986). Although the State may ordinarily exercise peremptory challenges for any reason at all, so long as the challenge is related to the outcome of the case, the Equal Protection Clause prohibits the use of a challenge to exclude venire persons solely on account of race. *Batson,* 476 U.S. at 89.

In the case sub judice, Seales asserts that the State's use of peremptory challenges to exclude two black female venire members violated *Batson.* He additionally asserts that the State did not provide sufficient race neutral reasons for the two strikes.

To succeed in a challenge of the use of peremptory challenges under *Batson,* the defendant must demonstrate:

1. That he is a member of a "cognizable racial group";

2. That the prosecutor has exercised peremptory challenges to remove veniremen of his race, and

3. That the facts and circumstances infer that the prosecutor used his peremptory challenges for the purpose of striking minorities.

Id. at 97 (citations omitted); *see also Walker v. State,* 671 So. 2d 581, 627 (Miss. 1995). The record reveals that the venire consisted of twenty-five members: three black females, three Native American females, seven white females, and twelve white males. The State used two of its challenges to strike black females. These facts are sufficient to meet the first two prongs of the *Batson* test, and they along with the other facts and circumstances present a prima facie case of discrimination by the State. Once this showing is made, the State is required to explain its peremptory challenges of the black venire persons and provide a race neutral reason for the exercise of its strikes. *Lockett v. State*, 517 So. 2d 1346, 1349 (Miss. 1987) (citation omitted). The record reveals that the State provided the

following justifications for its strikes of the two contested jurors:

In stating his reasons for striking Clara Bell Clemons, the State explained:

Your Honor, she has a son that was busted for drugs by the Philadelphia Police Department.

Seales requested to individually voir dire Ms. Clemons and it was revealed that Ms. Clemons had a son living with her with the nickname "Bat Mike." Officer Waddell then was called and testified that he had previously arrested Bat Mike for possession of marijuana.

The court found that the State's reasons were sufficiently race neutral and that the defense had failed to rebut the State's explanation.

For striking Mary Triplett, the State explained:

She has a daughter who was sent up from here for the sale of cocaine, and, also, she has a son who is in Oakley Training School.

The court found that the reason cited by the defense was sufficiently race-neutral.

The central inquiry is whether the State was able to present a race neutral explanation for its peremptory challenge. *Griffin v. State*, 607 So. 2d 1197, 1202 (Miss. 1992). The explanation need not rise to the level of justifying exercise of a challenge for cause. *Lockett v. State*, 517 So. 2d 1346, 1352 (Miss. 1987). Additionally, a trial court's findings relative to the exercise of a peremptory challenge on minority venirepersons are to be afforded great deference and will not be reversed unless clearly erroneous or against the overwhelming weight of the evidence. *Id.* at 1350. The record indicates that the trial judge undertook an evaluation of each explanation provided by the State for striking each venireperson. Based on the foregoing, we find that the evidence presented supports the trial judge's determination.

Accordingly, we affirm the judgment of the lower court.

THE JUDGMENT OF THE NESHOBA COUNTY CIRCUIT COURT OF CONVICTION OF POSSESSION OF COCAINE AND SENTENCE OF TWO YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS HEREBY AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.