

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-KA-00121 COA**

WILSON STRICKLAND

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

DATE OF JUDGMENT:	12/06/95
TRIAL JUDGE:	HON. BILL JONES
COURT FROM WHICH APPEALED:	GREENE COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	GEORGE S. SHADDOCK
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: JEAN SMITH VAUGHAN
DISTRICT ATTORNEY:	DALE HARKEY
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	CT 1 POSSESSION OF AN ILLICIT DISTILLERY: 1 YR; CT 2 POSSESSION OF MORE THAN 1 OZ BUT LESS THAN 1 KG OF MARIJUANA WITH INTENT TO DISTRIBUTE; CT 3 AGGRAVATED ASSAULT ON A LAW ENFORCEMENT OFFICER; CT'S 2 & 3 EACH 10 YRS, 2 YRS SUSPENDED; ALL COUNTS CONCURRENT
DISPOSITION:	REVERSED AND REMANDED - 10/21/97
MOTION FOR REHEARING FILED: 11/19/1997	
CERTIORARI FILED:	
MANDATE ISSUED:	4/14/98

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

THOMAS, P.J., FOR THE COURT:

Wilson Strickland appeals his convictions of possession of an illicit distillery, possession of more than one ounce but less than one kilogram of marijuana with intent to distribute, and aggravated assault on a police officer, raising the following issues as error:

I. THE TRIAL COURT ERRED IN FAILING TO SUSTAIN A MOTION IN LIMINE AS TO THE FILING OF A CIVIL SUIT ARISING FROM THE EVENTS SURROUNDING THE ARREST OF STRICKLAND.

II. THE TRIAL COURT ERRED IN FAILING TO SUSTAIN STRICKLAND'S OBJECTIONS TO CERTAIN OFFERED EXHIBITS AND TESTIMONY.

III. THE TRIAL COURT ERRED IN ALLOWING TESTIMONY, OVER OBJECTION, AS TO MARIJUANA SEEDS, AND IN ALLOWING SAID SEEDS TO BE MIXED WITH LEAFY MATERIAL, THUS RAISING A MISDEMEANOR TO A FELONY, UTILIZING AN UNTESTED ITEM OF EVIDENCE.

IV. THE TRIAL COURT ERRED IN ADMITTING INTO EVIDENCE, OVER OBJECTION, AN IGLOO COOLER AND ITS CONTENTS.

V. THE TRIAL COURT ERRED IN ADMITTING INTO EVIDENCE VARIOUS EXHIBITS OF MARIJUANA AND ALLEGED PARAPHERNALIA, SAID EXHIBITS BEING THE FRUITS OF AN ILLEGAL SEARCH.

VI. THE TRIAL COURT ERRED IN GRANTING, OVER OBJECTION, STATE'S JURY INSTRUCTIONS S-6, S-8, AND S-13, SAID INSTRUCTIONS BEING AN INCORRECT STATEMENT OF THE LAW.

VII. THE TRIAL COURT ERRED IN DENYING STRICKLAND'S PROFFERED JURY INSTRUCTIONS D-4, D-6, AND D-7, SAID INSTRUCTIONS BEING A CORRECT STATEMENT OF THE LAW.

VIII. THE TRIAL COURT ERRED IN FAILING TO SUSTAIN STRICKLAND'S MOTION FOR MISTRIAL UPON THE DISCLOSURE OF JUROR BULLARD'S STATUS AS AN ALDERMAN OF THE CITY OF LEAKESVILLE, MISSISSIPPI, AND AN INTERESTED PARTY IN A CIVIL SUIT AFFECTING STRICKLAND.

IX. THE TRIAL COURT ERRED IN NOT ALLOWING STRICKLAND TO CALL SHERIFF STANLEY MCLEOD AS A WITNESS.

X. THE TRIAL COURT ERRED IN NOT ADMITTING INTO EVIDENCE A LABORATORY REPORT SHOWING THE ALCOHOL CONTENT OF BLOOD AND URINE SAMPLES TAKEN FROM STRICKLAND UPON HIS ADMISSION TO A HOSPITAL.

XI. THE JURY VERDICT IS CONTRARY TO LAW AND AGAINST THE OVERWHELMING WEIGHT OF THE CREDIBLE EVIDENCE INTRODUCED AT

TRIAL.

As the eighth issue is dispositive of this case, we will only discuss it. All other issues are without merit and need not be addressed. Finding merit in Strickland's eighth assignment of error, we reverse and remand.

FACTS

On October 28, 1994, a task force consisting of state agents and the Greene and George County Narcotics Task Force seized a still located on State of Mississippi property. The property was adjacent to the land of Wilson Strickland. There were numerous paths that led to the still, and one path in particular led to a cooler containing marijuana and continued to lead to Strickland's home. A search warrant was then secured for the Strickland home and surrounding area. During the search of the premises, the officers found marijuana and marijuana seeds, a butane gas tank, and a gas hose. Before the warrant was executed on the house, the officers were on the property when Glenn Heathcock and Myra Ryals drove onto the property. The couple has since married and will be referred to as the Heathcocks. The Heathcocks were detained by the officers approximately five hours and have since filed a civil suit against the Sheriffs of Greene and George County, the Cities of Leakesville and Lucedale, and all parties who were members of the George-Greene County Metro Narcotics Task Force. The Stricklands have also filed a civil suit against the same parties.

While the officers were on the property waiting for Strickland to arrive, Strickland's wife, Carolyn, and his daughter, Anna, drove onto the property. Upon seeing the officers, the pair turned and left the premises. They found Strickland and told him that strange men were on his property. Upon hearing this, Strickland proceeded home. When Strickland arrived, he got out of his car with a single-barreled shotgun. Strickland turned and brought up the gun in the direction of Officer Rene Norman. Protecting himself, Norman fired at Strickland, striking him twice. Strickland fired no shots.

Strickland was indicted and tried for possession of an illicit still, possession of more than an ounce and less than a kilogram with intent to distribute marijuana, and aggravated assault of a law enforcement officer. The jury returned a verdict of guilty on each of the three counts.

ANALYSIS

VIII.

THE TRIAL COURT ERRED IN FAILING TO SUSTAIN STRICKLAND'S MOTION FOR MISTRIAL UPON THE DISCLOSURE OF JUROR BULLARD'S STATUS AS AN ALDERMAN OF THE CITY OF LEAKESVILLE, MISSISSIPPI, AND AN INTERESTED PARTY IN A CIVIL SUIT AFFECTING STRICKLAND.

In order to properly discuss this issue, we must refer to some extent to the argument of Issue I. Prior to trial, Strickland filed a motion in limine to exclude any testimony of the two civil suits filed on behalf of the Stricklands and the Heathcocks arising from the incident on October 28, 1994. The trial court granted the motion as it pertained to Strickland, but denied the same as to the Heathcocks. On the separate cross-examinations of the Heathcocks, it was brought to the attention of the jury that the Heathcocks had filed a civil suit arising out of this matter. If the trial court had granted the motion as

to both the Stricklands and the Heathcocks, and the fact of the matter was not put before the jury, the problem under this assignment would not exist. We do not fault the trial court for denying the motion as it pertained to the Heathcocks because the information was properly admissible to attack the credibility of the witnesses on cross-examination, and we would find this assertion of Strickland to be without merit. However, in admitting the testimony, the problem then arose as to Juror Joseph Bullard's being on the jury.

Prior to the conclusion of the trial, it was discovered that Juror Bullard was an alderman for the City of Leakesville. Bullard's status as an alderman was not disclosed on his juror information form and was not brought out during voir dire. The problem arises because Bullard is a party to the civil suits filed by both the Stricklands and the Heathcocks against the City of Leakesville based on his status as an alderman. Upon learning of Bullard's status as an alderman, Strickland moved for a mistrial. Strickland did not ask that the juror be dismissed from the panel and replaced by the alternate juror. The trial judge denied Strickland's motion for a mistrial. During Strickland's motion for a new trial the trial court stated:

I do have some trouble with Mr. Bullock (sic) being on the jury. I was asked for a mistrial. The Court denied a mistrial. I was never asked to have the witness voir dired. I have no knowledge and there is no evidence in the record as to what he knows pertaining to the suit. For instance, I don't know if he is a party defendant in the suit or just a Board of Alderman. I don't know if he knew that a suit had been filed prior to the trial of the criminal case. It had been recently filed, and I understand that was done because the statute of limitations was about to run. I don't know if he had any knowledge actually pertaining to the suit filed against the City of Leakesville where he was an alderman. Those are questions that I had to decide really without the full information. And none was given to me, and I did the best I could.

The trial court denied Strickland's motion for a new trial, and Strickland perfected this appeal.

"Whether to declare a mistrial is committed to the sound discretion of the trial court." *Johnson v. State*, 666 So. 2d 784, 794 (Miss. 1995). "The failure of the court to grant a mistrial will not be overturned on appeal unless the trial court abused its discretion." *Id.*

One of the oldest and most fundamental principles of law is that every defendant is entitled to a fair trial by an impartial jury. *Collins v. State*, 99 Miss. 47, 50, 54 So. 665, 665 (1911). There is a requirement on the trial court to protect the defendant's right to a fair and impartial jury. *Lester v. State*, 692 So. 2d 755, 793 (Miss. 1997). "The right to a fair trial by an impartial jury is fundamental and essential to our form of government. It is a right guaranteed by both the federal and state constitutions." *Simon v. State*, 688 So. 2d 791, 803 (Miss. 1997) (quoting *Johnson v. State*, 476 So. 2d 1195, 1209 (Miss. 1985)). A person is competent to be a juror if the juror has no interest, bias or prejudice in the prosecution, and the juror has no desire to reach a result other than that gained from the evidence and the law in the case. *Johnson*, 666 So. 2d at 794 (quoting *Simmons v. State*, 241 Miss. 481, 489, 130 So. 2d 860, 863 (1961)).

In the case *sub judice*, we are unable to conclude how a juror on the Board of Aldermen being sued as a representative of the City of Leakesville in two civil matters by virtue of an arrest that arose out of this case could be impartial. Although we have found no other case with this peculiar fact scenario, in the interest of fundamental judicial fairness, we feel compelled to reverse this case based on Juror

Bullard's being allowed to sit on the jury. We are troubled by the fact that Strickland never asked that Juror Bullard be removed from the panel. However, when faced with Strickland's request for a mistrial, the trial court itself should have either granted his request based on fundamental fairness, or dismissed the juror from the panel and replaced him with the alternate, or at the very least, taken the initiative and questioned the juror about his knowledge of the civil suits and whether he spoke with any of the other jurors concerning such. The trial court did none of these, and Juror Bullard continued to remain on the panel. Therefore, we conclude that Strickland was denied a fair and impartial jury, and reverse and remand this case for a new trial.

THE JUDGMENT OF THE GREENE COUNTY CIRCUIT COURT IS REVERSED AND REMANDED FOR PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. ALL COSTS ARE ASSESSED AGAINST GREENE COUNTY.

BRIDGES, C.J., McMILLIN, P.J., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.