

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 95-KA-00744 COA**

DARREN LOUIS PERKINS

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:	03/28/95
TRIAL JUDGE:	HON. ROBERT H. WALKER
COURT FROM WHICH APPEALED:	HANCOCK COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	THOMAS D. BERRY JR.
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: DEIDRE MCCRORY
DISTRICT ATTORNEY:	BEAU STEWART
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	TRANSFER OF A CONTROLLED SUBSTANCE, TO-WIT COCAINE: SENTENCED TO SERVE A TERM OF 10 YRS IN THE CUSTODY OF MDOC
DISPOSITION:	AFFIRMED - 12/16/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	2/4/98

BEFORE McMILLIN, P.J., KING, AND PAYNE, JJ.

KING, J., FOR THE COURT:

I.

On June 2, 1994, Bay St. Louis Police Officers Terry Eley and Lavaun Skaines met with other officers in the Sycamore, St. Francis and Washington areas to make street level drug buys. The undercover agent, Officer Skaines, was searched and provided with video and audio equipment to record the buy transaction. Skaines and a confidential informant named Connie traveled to the Dash

Six convenience store parking lot located in Bay St. Louis to make a drug buy. It was there that they encountered the Appellant, Darren Louis Perkins. Skaines called Perkins to her vehicle and asked him to sell her a \$20 rock of cocaine. Identifying himself as "Bob," Perkins sold crack cocaine to Officer Skaines. On January 9, 1995, Perkins was indicted for the transfer of a controlled substance within 1000 feet of a public park in violation of Miss. Code Ann. §§ 41-29-139(a)(1) (1972) and 41-29-142 (Rev. 1993).

Skaines testified at Perkins's trial that she purchased a \$20 rock of cocaine from a black male who identified himself as "Bob" at the Dash Six convenience store parking lot. Skaines positively identified "Bob" as the Appellant, Darren Louis Perkins.

Perkins testified that he talked to Officer Skaines on the day in question but denied selling drugs to her. The owner of the Dash Six convenience store, Ricky Cameron, testified on Perkins's behalf. Cameron testified that he did not witness Perkins sell drugs to Skaines. Cameron further testified that Perkins knew that he did not allow drugs to be sold on his property and that he conveyed the same to Skaines.

In rebuttal, Officer Skaines testified that Cameron never said he did not allow drugs on his property. Skaines testified that she met with Cameron approximately three times after she purchased drugs from Perkins. During this meeting, Cameron expressed his desire to "party" with Skaines and propositioned her to trade drugs for sexual favors with him.

On March 28, 1995, a Hancock County jury convicted Perkins of the crime charged in the indictment. Perkins was sentenced to serve ten years in the custody of the Mississippi Department of Corrections. Aggrieved by the conviction and sentence, Perkins appeals and assigns the following as error:

- 1. The trial court erred in holding that the State had established race neutral reasons for striking the only three black veniremen.**
- 2. The trial court erred in denying Perkins's motion in limine concerning the cross-examination of Ricky Cameron and the objection to the questions asked of Officer Skaines on rebuttal.**

Finding no reversible error, we affirm.

II.

DID THE TRIAL COURT ERR IN HOLDING THAT THE STATE HAD ESTABLISHED RACE NEUTRAL REASONS FOR STRIKING THE ONLY THREE BLACK VENIREMEN?

Perkins is a member of the black race. The venire panel presented to Perkins consisted of only three black members. During jury selection, both Perkins and the State exhausted all six of their peremptory strikes. The trial judge allowed the State to peremptorily strike all three black panel members over Perkins's objection. Perkins argues on appeal that the trial judge erred in holding the State had race neutral reasons for the strikes in violation of *Batson v. Kentucky*, 476 U.S. 79 (1986). For purposes of evaluation of the merits of this argument, the reasons given for the removal of each

veniremen are discussed separately below.

Veniremen Alexander:

Mr. Alexander had been a member of a jury panel selected the week before Perkins's trial began. The district attorney assigned to Perkins's case was informed by the previous week's prosecutor that Alexander had exhibited a problem hearing when spoken to in a normal tone of voice. After speaking with Alexander at the bench, the trial judge was left with the impression that he could, in fact, hear. The State also alleged that persons residing in Alexander's home had criminal cases pending before the court. An unnamed juvenile that shared Alexander's last name had been arrested for shoplifting and another individual with the same last name had been arrested for writing bad checks. Perkins's attorney objected, citing his own hearing loss and the fact that the State had made no attempts to verify whether Alexander actually shared a residence with those persons with pending criminal cases.

Veniremen Parker:

Ms. Parker had a son and grandson that were convicted on drug charges. Parker's son had been represented by defense counsel, and she exhibited an friendliness and familiarity with defense counsel. Even though she stated she could be fair and impartial, the State reasoned that she might have been biased against the State.

Veniremen Cannon:

Ms. Cannon stated that she "knew of" Perkins and that she frequented the defense witness's convenience store on a regular basis. Cannon's brother had been charged with the sale of a controlled substance. Ms. Cannon stated that she could be fair and impartial.

Discussion

A defendant has the right to be tried by a petit jury which consists of jurors selected in a nondiscriminatory manner. Under *Batson*, the defendant must show (1) that he is a member of a cognizable racial group, (2) that the prosecutor has exercised peremptory challenges to remove from the venire members of the defendant's race, and (3) that these facts and other relevant circumstances raise an inference that the prosecutor used that practice to exclude veniremen on account of their race. *Id.* at 96. *Powers v. Ohio*, 499 U.S. 400 (1991), modified *Batson* to apply even when the accused and the challenged juror do not share the same race.

In the case at bar, the trial judge found that Perkins failed to prove purposeful discrimination by the State in its exercise of peremptory strikes. This Court has adopted the clearly erroneous standard of review of such findings. *Davis v. State*, 551 So. 2d 165, 171 (Miss. 1989); *Lockett v. State*, 517 So. 2d 1346, 1350 (Miss. 1987). These findings are entitled to great deference. *Davis*, 551 So. 2d at 171; *Batson*, 476 U.S. at 98 n. 21 (1986). The State offered legitimate, race neutral reasons for the strikes exercised against the black veniremen. Finding that the trial judge did not abuse his discretion in granting the peremptory strikes, we affirm.

III.

DID THE TRIAL COURT ERR IN DENYING PERKINS'S MOTION IN LIMINE

CONCERNING THE CROSS-EXAMINATION OF RICKY CAMERON AND THE OBJECTION TO THE QUESTIONS ASKED OF OFFICER SKAINES ON REBUTTAL?

Perkins moved in limine to prevent the State from attacking the credibility of Ricky Cameron. The court ruled that under Rule 616 of the Mississippi Rules of Evidence that such impeachment was proper to show bias or prejudice of the witness. Cameron testified that he did not witness Perkins sell drugs to Skaines on June 2, 1994. He testified that he told Skaines and her companion that he did not allow drugs on his property. To attack Cameron's credibility as a witness, the State asked Cameron whether he offered Skaines drugs in exchange for sexual favors. He testified that he had not. The State rebutted this with the testimony of Officer Skaines. Skaines testified that Cameron never told her that he did not allow drugs on his property and that he had offered to trade drugs for sex with her.

The trial judge has broad discretion as to the admissibility of evidence. Unless this discretion is so abused as to be prejudicial to the accused this Court will not reverse the lower court's ruling. *Dye v. State*, 498 So. 2d 343, 344 (Miss. 1996) (quoting *Shearer v. State*, 423 So. 2d 824 (Miss. 1982)); *Pharr v. State*, 465 So. 2d 294, 302 (Miss. 1984); *May v. State*, 460 So. 2d 778, 781 (Miss. 1984); *Pearson v. State*, 428 So. 2d 1361, 1364 (Miss. 1983). The State offered credible evidence which was sufficient to secure Perkins's conviction. Specifically, the State offered the video tape of Perkins at the scene of the crime, Officer Skaines's eyewitness account of the buy and her in-court identification of Perkins as the person who sold her the drugs. The jury, as the sole judge of the weight and credibility of the testimony, found the State's witnesses to be credible and reached the unanimous conclusion that Perkins was guilty of the crime charged. Finding no error, we affirm.

THE JUDGMENT OF THE HANCOCK COUNTY CIRCUIT COURT OF CONVICTION OF TRANSFER OF A CONTROLLED SUBSTANCE, TO-WIT COCAINE, AND SENTENCE TO SERVE TEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO HANCOCK COUNTY.

BRIDGES, C.J., McMILLIN, P.J., COLEMAN, DIAZ, HERRING, HINKEBEIN, PAYNE, AND SOUTHWICK, JJ., CONCUR. THOMAS, P.J., NOT PARTICIPATING.