

**IN THE COURT OF APPEALS 2/25/97**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 94-KA-01170 COA**

**JERRY D. WHITE, A/K/A JERRY D. WHITE, SR.**

**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. KOSTA N. VLAHOS

COURT FROM WHICH APPEALED: CIRCUIT COURT OF STONE COUNTY

ATTORNEY FOR APPELLANT:

CALVIN D. TAYLOR

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: DEIRDRE MCCRORY

DISTRICT ATTORNEY: CONO CARANNA

NATURE OF THE CASE: CRIMINAL

TRIAL COURT DISPOSITION: APPELLANT CONVICTED OF AGGRAVATED ASSAULT OF  
A LAW ENFORCEMENT OFFICER

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

KING, J., FOR THE COURT:

Jerry D. White, Sr., was convicted in the Circuit Court of Stone County of aggravated assault of a law enforcement officer . White was sentenced to a term of sixteen years in the custody of the Mississippi Department of Corrections. Subsequent to his conviction and sentence, White filed a motion for a new trial, which was denied by the trial court. Aggrieved, White appeals alleging the following points of error: (1) the trial court erred when it found the prosecution offered sufficient race-neutral reasons for exercising four of six peremptory challenges to exclude prospective African-Americans from the jury; (2) the trial court erred by not granting his motion in limine, which sought to prevent the State's witness from testifying that White had committed another crime in addition to the crime that was the basis of the present trial; (3) the trial court erred by denying his motion for a new trial, which was based on post-trial discovery that jurors observed White shackled in full prison attire; and, (4) the trial court erred when it denied his motion for mistrial after the jury sent a note to the court stating that it was deadlocked. Finding the trial court did not abuse its discretion in denying White's motion for a new trial, we affirm.

#### FACTS

On the night of February 25, 1994, Jerry D. White, Sr., was stopped for driving erratically on Highway 49, just south of Wiggins, by Officer Darrell Thornton, a Stone County deputy sheriff. Officer Thornton testified that White acted very nervous and for his safety he commanded White to empty his pockets on the trunk of the car. Complying, White emptied all of his pockets except for the pocket of a white T-shirt that he was wearing. The officer did a pat down of White and felt what he thought to be a "crack cocaine biscuit." White and the officer then struggled, which allegedly led to White firing the officer's weapon at him. White claims to have received a busted lip during the altercation.

Subsequent to White's arrest, he was tried and convicted of aggravated assault of a law enforcement officer. Alleging seven points of error, White moved for a new trial. The trial court denied that motion, and White now appeals contending the following four points of error:

I. THE TRIAL COURT WAS IN ERROR WHEN IT FOUND THE PROSECUTION OFFERED SUFFICIENT RACE-NEUTRAL REASONS FOR EXERCISING FOUR OF SIX PEREMPTORY CHALLENGES TO EXCLUDE PROSPECTIVE AFRICAN-AMERICANS FROM THE JURY.

II. THE TRIAL COURT ERRED BY NOT GRANTING WHITE'S MOTION IN LIMINE WHICH SOUGHT TO PREVENT THE STATE'S WITNESS FROM TESTIFYING THAT HE HAD COMMITTED ANOTHER CRIME IN ADDITION TO THE CRIME THAT WAS THE BASIS OF THE PRESENT TRIAL.

III. THE TRIAL COURT ERRED BY DENYING WHITE'S MOTION FOR A NEW TRIAL WHICH WAS BASED ON POST-TRIAL DISCOVERY THAT JURORS OBSERVED WHITE SHACKLED AND IN FULL PRISON ATTIRE.

IV. THE TRIAL COURT ERRED WHEN IT DENIED WHITE'S MOTION FOR MISTRIAL AFTER THE JURY SENT A NOTE TO THE COURT STATING THAT IT WAS DEADLOCKED.

SCOPE OF REVIEW

The standard of review employed upon a motion for a new trial, in a criminal case, is provided by *Thornhill v. State*, 561 So. 2d 1025, 1030 (Miss. 1989):

In determining whether or not a jury verdict is against the overwhelming weight of the evidence, this Court must accept as true the evidence which supports the verdict and will reverse only when it is convinced that the circuit court has abused its discretion in failing to grant a new trial.

I. THE TRIAL COURT ERRED WHEN IT FOUND THE PROSECUTION OFFERED SUFFICIENT RACE NEUTRAL REASONS FOR EXERCISING FOUR OF SIX PEREMPTORY CHALLENGES TO EXCLUDE PROSPECTIVE AFRICAN-AMERICANS FROM THE JURY.

Jerry D. White, Sr., is a black male. He argues on appeal that the trial court allowed the prosecution to remove four of six African-Americans from the jury panel without articulating sufficient race-neutral reasons for exercising its peremptory challenges. *Batson v. Kentucky*, 476 U.S. 79, 96 (1986). During the trial, White made a *Batson* challenge and set forward a prima facie case of purposeful discrimination to the prosecution's exercise of its peremptory challenges. To establish a prima facie case of purposeful discrimination in the selection of the jury under *Batson*, a party 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;
- (3) that these facts and any other relevant circumstances raise an inference that the prosecutor used that practice to exclude the veniremen from the petit jury on account of their race.

*Batson*, 476 U.S. at 96.

In the present case, White attempted to make a prima facie case of purposeful discrimination showing that the four jurors were African-American and that all were excluded by the State. He further attempted to show that the State excluded the African-Americans because of their race. However, our supreme court has held that this is not enough to establish a case of purposeful discrimination. Under the precepts of the Mississippi Supreme Court, the burden then shifts to the State to come forward with race-neutral reasons for challenging African-American jurors. *Davis v. State*, 551 So. 2d 165, 170 (Miss. 1989). In the instant case, the trial judge found that the State did articulate race-neutral reasons for exercising four of its six peremptory challenges, to remove the only African-Americans from the jury panel. Of the four jurors, one had a personal relationship with White; one was a neighbor of White's; one had a family member recently convicted of a narcotic charge; and, one had a familial relationship with a key defense witness. The trial court found the

reasons articulated by the State acceptable. Such findings are entitled to "great deference" from a reviewing court. *Batson*, 476 U.S. at 98 n.21. At this juncture, White could have rebutted the States enumerated reasons, but he did not. *See Chisolm v. State*, 529 So. 2d 635, 639 (Miss. 1988). He remained silent, which in this case was fatal. Considering the articulated reasons, we find that the trial court properly executed its duty in allowing the peremptory challenges.

## II. THE TRIAL COURT ERRED BY NOT GRANTING WHITE'S MOTION IN LIMINE WHICH SOUGHT TO PREVENT THE STATE'S WITNESS FROM TESTIFYING THAT HE HAD COMMITTED ANOTHER CRIME IN ADDITION TO THE CRIME THAT WAS THE BASIS OF THE PRESENT TRIAL.

Prior to trial, White sought to exclude Officer Thornton's testimony that when he stopped White and subsequently patted him down he felt a controlled substance in the pocket of his T-shirt. The trial court denied White's motion in limine and allowed the officer's testimony. White contends that the trial court erred in denying his motion in limine. Our supreme court has held that "[p]roof of another crime is permissible where the offense charged and that offered to be proved are so interrelated as to constitute a single transaction or occurrence or a closely related series of transactions." *Ladner v. State*, 584 So. 2d 743, 758 (Miss. 1991) (citing *Wheeler v. State*, 536 So. 2d 1347, 1352 (Miss. 1988)).

In the present case White was charged with aggravated assault of a law enforcement officer. This occurred after the officer did a pat down of White following a traffic stop. White resisted the officer, and a struggle ensued which led to the assault of the officer. The trial court found these incidents interrelated and the testimony of such more probative than prejudicial. We do not find that the trial court abused its discretion in failing to grant a new trial on the basis of this issue. Thus, we affirm.

## III. THE TRIAL COURT ERRED BY DENYING APPELLANT'S MOTION FOR A NEW TRIAL WHICH WAS BASED ON POST-TRIAL DISCOVERY THAT JURORS OBSERVED WHITE SHACKLED AND IN FULL PRISON ATTIRE.

White contends that several jurors were allowed to view him shackled and in full prison garb. He contends that the door to the jury room was open, and several jurors had already arrived, and that he was paraded by the open door with no effort being made by the bailiff to secure him from the jurors' sight. "[T]he failure, through an oversight, to remove handcuffs from a prisoner for a short time or any technical violation of the rule prohibiting shackling, not prejudicial to him, is not ground for reversal." *Davenport v. State*, 662 So. 2d 629, 633 (Miss. 1995) (citation omitted). In the present case, White does not allege anything more than an oversight by the bailiff. We affirm as to this issue.

## IV. THE TRIAL COURT ERRED WHEN IT DENIED WHITE'S MOTION FOR MISTRIAL AFTER THE JURY SENT A NOTE TO THE COURT STATING THAT IT WAS DEADLOCKED.

The jury deliberated for approximately five hours before sending a note out to the court that it was deadlocked. The note stated, "We have 11 for 1 against. And we cannot resolve." Upon receiving this note, the court entertained motions from White and the State. White moved for a mistrial, and the court denied it with the intentions of issuing the jury a *Sharplin* charge. However, before the court could issue such a charge the jury returned a verdict of guilty. We find that the trial court did

not abuse its discretion, and we affirm as to this issue.

**THE JUDGMENT OF THE CIRCUIT COURT OF STONE COUNTY OF CONVICTION OF AGGRAVATED ASSAULT ON A LAW ENFORCEMENT OFFICER AND SENTENCE OF 16 YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. COSTS OF APPEAL ARE TAXED TO STONE COUNTY.**

**BRIDGES, C.J., McMILLIN, P.J., BARBER, COLEMAN, DIAZ, PAYNE, AND SOUTHWICK, JJ., CONCUR.**

**THOMAS, P.J., AND HERRING, J., NOT PARTICIPATING.**