

Abram v. State
Miss., 1988.

Supreme Court of Mississippi.
Donald Ray ABRAM
v.
STATE of Mississippi.
No. DP-55.

April 13, 1988.

Defendant was convicted in the Circuit Court, Marion County, Michael R. Eubanks, J., of capital murder, and sentenced to life imprisonment. Defendant appealed. The Supreme Court, Sullivan, J., held that case had to be remanded for *Batson* hearing.

Remanded with instructions.

West Headnotes

Criminal Law 110  **1181.5(3.1)**

[110](#) Criminal Law

[110XXIV](#) Review

[110XXIV\(U\)](#) Determination and Disposition of Cause

[110k1181.5](#) Remand in General; Vacation

[110k1181.5\(3\)](#) Remand for Determination or Reconsideration of Particular Matters

[110k1181.5\(3.1\)](#) k. In General. [Most Cited Cases](#)

(Formerly 110k1181.5(3))

Direct appeal of capital murder conviction had to be remanded for *Batson* hearing to determine whether prosecutor's use of five peremptory challenges to exclude blacks from jury constituted purposeful racial discrimination; defense counsel made motion to quash venire at time jury was impaneled based on prosecution's use of peremptory challenges and, after motion was overruled, defense counsel renewed motion and introduced jury list into evidence as exhibit. [U.S.C.A. Const. Amends. 5, 14.](#)

***1018** Merrida P. Coxwell, Jr., Stanfield, Carmody & Coxwell, Jackson, for appellant.

Edwin Lloyd Pittman and Mike Moore, Attys. Gen., by Marvin L. White, Jr., Asst. Atty. Gen., Jackson, for appellee.

Before ROY NOBLE LEE, C.J., and SULLIVAN and ANDERSON, JJ.

SULLIVAN, Justice, for the Court:

Donald Ray Abram was convicted in the Circuit Court of Marion County for capital murder and sentenced to life imprisonment in the custody of the Mississippi Department of Corrections.

On July 23, 1982, Abram and Herman Barnes robbed a convenience store in Marion County. After the robbery, Barnes shot and killed the store clerk and a customer who entered the store during the robbery. At voir dire the prosecutor used five of his peremptory challenges to strike black jurors which resulted in an all white jury. Defense counsel made a motion to quash the venire at the time the jury was empaneled arguing that the prosecution's ***1019** use of peremptory challenges showed a systematic exclusion of blacks from the jury. The motion was overruled. The defense later renewed the motion and introduced the jury list into evidence as an exhibit.

Abram assigned as error the denial of his motion to quash. At the time the briefs were filed in this cause, the United States Supreme Court had granted certiorari to address this question. *Batson v. Kentucky* is now law and holds that "a prosecutor's use of peremptory challenges to exclude blacks from a jury trying a black defendant may be the basis

for a claim of purposeful racial discrimination under the due process clause.” [Thomas v. State, 517 So.2d 1285, 1286 \(Miss.1987\)](#), citing [Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 \(1986\)](#).

This case is on direct appeal, and thus is in the proper window for the application of *Batson*. [Griffith v. Kentucky, 479 U.S. 314, 107 S.Ct. 708, 93 L.Ed.2d 649 \(1987\)](#). See also, [Caldwell v. State, 517 So.2d 1360 \(Miss.1987\)](#), and [Harper v. State, 510 So.2d 530 \(Miss.1987\)](#).

Abram has also satisfied the procedural requirements for *Batson* application established in [Thomas v. State, 517 So.2d 1285 \(Miss.1987\)](#), and [Jones v. State, 517 So.2d 1295 \(Miss.1987\)](#). The record clearly reflects a timely objection to the composition of the jury by defense counsel and a subsequent renewal of that motion. See also, [Lockett v. State, 517 So.2d 1346 \(Miss.1987\)](#).

Following our prior decisions, this case must be remanded to the lower court for a *Batson* hearing. The type of proof and the burden of such has been clearly enumerated by this Court in several recent decisions.

Under the *Harper* rationale, this case must be remanded to the lower court to determine if the appellant can establish a prima facie case of the constitutionally impermissible exclusion of the black jurors. The prosecutor must then enumerate neutral, non-racial explanations for those peremptory challenges, which the appellant may rebut, if she can. If purposeful discrimination is found, the lower court must order a new trial; if it is not found, the cause should be certified to this Court, along with the record of the hearing and finding of fact by the lower court.

[Joseph v. State, 516 So.2d 505 \(Miss.1987\)](#). See also, [Taylor v. State, 524 So.2d 565, \(Miss. 1988\)](#), [Dedeaux v. State, 519 So.2d 886 \(Miss.1988\)](#); [Harper v. State, 510 So.2d 530 \(Miss.1987\)](#), and [Williams v. State, 507 So.2d 50 \(Miss.1987\)](#).

REMANDED FOR PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION.

ROY NOBLE LEE, C.J., HAWKINS and DAN M. LEE, P.JJ., and PRATHER, ROBERTSON, ANDERSON, GRIFFIN and ZUCCARO, JJ., concur.
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