

IN THE COURT OF APPEALS 12/3/96

OF THE

STATE OF MISSISSIPPI

NO. 92-KA-01262 COA

CHARLES PRINGLE

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: HONORABLE WILLIAM F. COLEMAN

COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

THOMAS FORTNER

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL BY: SCOTT STUART

NATURE OF THE CASE: SHOOTING INTO AN OCCUPIED DWELLING

TRIAL COURT DISPOSITION: CONVICTED OF SHOOTING INTO AN DWELLING AND
SENTENCED TO SERVE A TERM OF 10 YEARS IN THE CUSTODY OF MDOC.

BEFORE FRAISER, C.J., KING, AND PAYNE, JJ.

KING, J., FOR THE COURT:

Charles Pringle was convicted in the Circuit Court of the First Judicial District of Hinds County of shooting into an occupied dwelling. He was sentenced to serve ten years in the custody of the Mississippi Department of Corrections. He appeals his convictions, assigning two points of error: (1) the trial court erred in allowing the jury to take portions of a transcript into deliberations that were not admitted into evidence; and (2) the trial court denied him the right to a speedy trial. Finding merit in Pringle's first argument, we reverse and remand for a new trial.

FACTS

On September 24, 1990, Charles Pringle, Raymond Washington, Denice Brown, and several acquaintances were allegedly involved in a fight at a neighborhood grocery store. One of the young men involved in the skirmish was shot in the hip by the store's owner. He was taken to the hospital, by Pringle and Washington, to receive medical attention. Sometime thereafter Pringle and Washington left the hospital and went to their respective homes. Later that evening, someone fired several shots at the home of Denice Brown, Pringle's former girlfriend. Ms. Brown alleged that Pringle and Washington fired the shots from the street.

A warrant was issued in Hinds County for Pringle's arrest, but he was not apprehended at that time. In November of 1990, Pringle was arrested and charged with armed robbery in Madison County. On May 30, 1991, Jackson Police served Pringle with a warrant for his arrest for his alleged involvement in the shooting into Ms. Brown's home. The Hinds County grand jury indicted Pringle on the shooting charge in August of 1991. On August 28, 1991, Pringle was arraigned and then returned to the Madison County jail until September 3, 1991, when he was transported to Parchman to begin serving a fifteen-year sentence for armed robbery.

Hinds County set trial dates in November of 1991 and in August of 1992 to try Pringle for the shooting incident. However, Pringle was not brought to trial at those times, and there is no record of continuances granted to either Pringle or the State. In August of 1992, Pringle made a motion to dismiss for violation of his right to a speedy trial. The court denied this motion, and Pringle was brought to trial on September 9, 1993.

Prior to Pringle's trial, Raymond Washington pled guilty to the charge of shooting into an occupied dwelling. During his plea hearing, Washington testified that even though Pringle was in the car with him, Pringle did not have a gun and did not fire any shots at Brown's home. However, when testifying in the present case, Washington stated that Pringle was not present when the shooting occurred. Washington attributed the inconsistent statements to his having misunderstood the prosecutor during the plea hearing. He explained that he thought the prosecutor was asking whether Pringle was with him earlier that day. Neither party sought to have the transcript from Washington's guilty plea hearing introduced into evidence.

After the close of evidence and arguments, the jury deliberated for one hour and forty minutes. Thereafter, the jury sent a note to the court requesting portions of the transcript from Washington's guilty plea hearing. Specifically, the jury requested the pages of the transcript that contained Washington's testimony that placed Pringle with him when the incident occurred. After overruling the Defendant's objection that the transcript was not admitted into evidence, the court granted the

jury's request. Reasserting the objection, the defense then asked the court to include related portions of the transcript so that the jury might view the statements in the context in which Washington made them. The court sent the requested pages of the transcript into the deliberations without instructing the jury whether the transcript should be used as impeachment or substantive evidence. Within thirty minutes of receiving the transcript, the jury found Pringle guilty of shooting into an occupied dwelling. Pringle was sentenced to ten years imprisonment, to be served consecutively with a fifteen-year sentence received in Madison County.

I. WHETHER THE TRIAL COURT ERRED IN ALLOWING THE JURY TO CARRY PAPERS INTO DELIBERATIONS THAT WERE NOT ADMITTED INTO EVIDENCE.

During deliberations, the jury requested portions of a transcript made during the guilty plea hearing of defense witness Raymond Washington. Washington gave testimony on cross-examination about his guilty plea testimony, but the transcript was not admitted into evidence. Pringle argues that the trial court committed reversible error when it allowed the jury to carry portions of Raymond Washington's guilty plea transcript into deliberations. Because the transcript had not been admitted into evidence, Pringle contends that the trial court violated his right to due process as well as section 99-17-37 of the Mississippi Code and Rule 5.14 of the Uniform Criminal Rules of Circuit Court Practice. The rule is well established in Mississippi that the relevancy and admissibility of evidence are within the discretion of the trial judge. *Craft v. State*, 656 So. 2d 1156, 1163 (Miss. 1995); *Parker v. State*, 606 So. 2d 1132, 1137-38 (Miss. 1992). "That discretion must be exercised within the scope of the Mississippi Rules of Evidence and reversal will only be had when an abuse of discretion results in prejudice to the accused." *Parker*, 606 So. 2d at 1137-38. Pursuant to Mississippi Rule of Evidence 103, this Court will reverse if the trial court violated a substantial right of a defendant and an objection was made on the record. *King v. State*, 615 So. 2d 1202, 1206 (Miss. 1993). We recognize a defendant's right to a fair and impartial trial to be a substantial right. *Id.*

Pringle challenges the trial court's ruling under section 99-17-37 and Rule 5.14. Both the statute and the rule permit the jury to take into deliberations only those papers admitted into evidence during trial. *See* Miss. Code Ann. § 99-17-37 (1972); Unif. Crim. R. Cir. Ct. Prac. 5.14. The transcript from Raymond Washington's guilty plea hearing was never admitted into evidence. Thus, the trial court's decision to allow consideration of Washington's transcript was erroneous.

Our analysis now turns to whether the trial court's ruling affected a substantial right of the Defendant Charles Pringle. In the present case, the transcript from Washington's guilty plea hearing was not admitted into evidence. Washington testified on direct and cross-examination about inconsistent statements that he made during the plea hearing, but neither the defense nor the State sought to have the transcript admitted. However, the trial court, at the jury's request, allowed specific portions of Washington's plea transcript into the deliberations. Counsel for the defense made an objection on the record, but was overruled. "When faced with the objection to improper evidence, the trial judge has two options. First, he may sustain the objection and admonish the jury accordingly, or next, he may allow the evidence and give [a] specific cautionary instruction to the jury. . . ." *King*, 615 So. 2d at 1206 (citations omitted). In the present case, the latter is applicable. However, the court did not

instruct the jury as to whether it should consider Washington's transcript as impeachment or substantive evidence.

We find the trial court's failure to provide the jury with a limiting instruction or an admonition substantially prejudiced Pringle and denied him the right to a fair and impartial trial. Our findings are supported by the supreme court's ruling in an analogous case, *Hudgins v. State*. In *Hudgins*, the court found that the defendant was prejudiced by the introduction of improper testimony, because the trial court failed to give cautionary instructions to the jury. *Hudgins v. State*, 569 So. 2d 1206, 1207 (Miss. 1990). In the case sub judice, Washington testified that he alone shot into Denice Brown's home. However, the testimony contained in the transcript from Washington's guilty plea hearing states that Pringle was with Washington, but did not have a gun and did not fire shots at Brown's house. Washington admitted making the inconsistent statement during the plea hearing, but said that he had misunderstood the State's question. He said that he thought that the prosecutor meant whether Pringle had been with him during the fight which occurred earlier that evening. Clearly, Washington's inconsistent testimony could either implicate Pringle in the shooting incident or support Pringle's claim that he was not present when Washington committed the crime. The court's failure to provide the jury with a limiting or cautionary instruction left the jury to use the transcript arbitrarily as either impeachment evidence, substantive evidence, or both. Further, the jury deliberated for one hour and forty minutes before requesting portions of the transcript, and only thirty minutes more after receiving the transcript before arriving at a verdict of guilty. The jury's actions suggest that some detail contained within the improperly allowed transcript influenced its subsequent guilty verdict. Therefore, we find that the trial court's submission of the transcript to the jury prejudiced Pringle and impinged upon his right to a fair and impartial trial. We reverse and remand for a new trial.

II. WHETHER THE STATE VIOLATED PRINGLE'S STATUTORY RIGHT TO A SPEEDY TRIAL.

Although reversal of this case is already ordered for one reason, this Court addresses the other assigned error under its supervisory duty to give instruction on assigned matters that might recur. Our discussion of the second assignment of error in this appeal is an exercise of that duty. Pringle claims that the State violated his statutory right to be brought to trial within 270 days of his arraignment in Hinds County. This 270-day rule is well established under section 99-17-1 of the Mississippi Code which provides:

Unless good cause be shown, and a continuance duly granted by the court, all offenses for which indictments are presented to the court shall be tried no later than two hundred seventy (270) days after the accused has been arraigned.

Miss. Code Ann. § 99-17-1 (1972). "Where the accused is not tried within 270 days of his arraignment, the state has the burden of establishing good cause for the delay since the accused is under no duty to bring himself to trial." *Winder v. State*, 640 So. 2d 893, 894 (Miss. 1994). However, the accused cannot cause the delay and then claim a violation of such right. *Yarber v. State*, 573 So. 2d 727, 729 (Miss. 1990) (citations omitted).

At his arraignment on August 28, 1991, Pringle represented to the court that he had retained counsel. However, the court ascertained on November 26, 1991, that Pringle did not have counsel in this matter. Even if we attribute this lapse of time to Pringle, the State failed to bring Pringle to trial within 270 days of arraignment. The State does not allege that it was prepared to go forward on the initial trial date of November 19, 1991, nor was there a request for a continuance by the State. Therefore, the Defendant's misrepresentation to the court may have initiated the delay, but we cannot find that it was the sole or proximate cause of the State's failure to proceed within 270 days.

A review of the record indicates that the court simply failed to locate Pringle in order to bring him to trial in a speedy manner. Testimony from Ms. Sandra Kirby, the Hinds County Circuit Court Administrator, reveals that Pringle's location was unknown even though he was in the custody of Mississippi Department of Corrections at Parchman. In fact, during the hearing on the motion to dismiss, the court administrator testified that once Pringle was transported from the Madison County jail nobody knew where he was. The administrator stated, "It's a breakdown in communication. I just have so many we just lose them." As a result, Pringle was not brought to trial until August 14, 1992, almost one year after arraignment. We find the State's negligence in this matter reproachable.

Furthermore, in this case neither party made any motions for continuances. Section 99-17-1 specifically requires both good cause and a duly granted continuance as prerequisites for a delay in trial. The State fails to present additional arguments to show good cause for the delay in Pringle's trial. We gleaned from the records that the court did set one other trial date, August 12, 1992, after Pringle was located at Parchman. That trial did not occur nor was there a continuance granted for either party. The State contends that the Mississippi Supreme Court held in *Arnett v. State* that where good cause exists continuances are not required. However, the State has incorrectly stated this proposition. In *Arnett*, the judge and attorneys orally agreed upon a continuance as opposed to a written order. *Arnett v. State*, 532 So. 2d 1003, 1010 (Miss. 1988). In our view, even when parties orally agree to a continuance the better approach is to file an order, particularly for appellate review. In the present case, neither party requested a continuance, nor did the court grant a continuance on its own motion. Thus, under the plain language of the section 99-17-1, the State violated the Defendant's right to a speedy trial within 270 days of his arraignment.

Having determined that Pringle was not afforded a speedy trial, we now look to whether he was prejudiced by the delay. Pringle was incarcerated in Parchman, on an unrelated offense, during the period that the trial could have taken place. The delay in trial did not affect his liberty in any way, nor does he allege that the delay resulted in any other detriment. "Where a defendant is serving a prison term in the state penitentiary or is imprisoned on totally unrelated charges, there is no resulting prejudice based solely on continued incarceration." *Winder v. State*, 640 So. 2d 893, 895 (Miss. 1994). Thus, we find no cause to reverse on this assignment of error.

In conclusion, we find that the court's erroneous submission of portions of the transcript from Raymond Washington's guilty plea hearing violated section 99-17-37 of the Mississippi Code, Rule 5.14 of the Uniform Criminal Rules of Circuit Court Practice, and the Defendant's right to a fair and impartial trial. Therefore, the case is reversed and remanded for a new trial on the merits.

THE JUDGMENT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY CIRCUIT COURT IS REVERSED AND REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS OF THIS APPEAL ARE ASSESSED AGAINST HINDS COUNTY.

BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.

FRAISER, C.J., CONCURS IN RESULT ONLY.