

**COPY**

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

SILENTRO MILLER a/k/a SELENTRO MILLER

APPELLANT

V.

STATE OF MISSISSIPPI

NO.2007-KA-00885-SCT

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APPELLEE

**BRIEF OF THE APPELLANT**

ORAL ARGUMENT NOT REQUESTED

**MISSISSIPPI OFFICE OF INDIGENT APPEALS**

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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

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APPELLANT

V.

NO.2007-KA-00885-SCT

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APPELLEE

**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this court may evaluate possible disqualifications or recusal.

1. State of Mississippi
2. Selentro Miller
3. Doug Evans and the Winston County District Attorneys Office
4. Honorable Joseph H. Loper, Jr.

THIS 17<sup>th</sup> day of October 2007.

Respectfully submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS  
For Selentro Miller, Appellant

By:



Leslie S. Lee, Counsel for Appellant

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## **STATEMENT OF THE ISSUE**

### **THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE**

## **STATEMENT OF THE CASE**

This appeal proceeds from the Circuit Court of Winston County, Mississippi, and a judgment of conviction for the crime of sale of cocaine against Selentro Miller and resulting in a twenty (20) year sentence with a fine of five thousand dollars (\$5,000.00), court costs and assessments. Tr. 88, C.P. 42, R.E. 12. Miller's driver's license was also suspended for six (6) months. Tr. 88. C.P. 42, R.E. 12. This sentence followed a jury trial on April 26, 2007, Honorable Joseph H. Loper, Jr., Circuit Judge, presiding. Selentro Miller is presently incarcerated with the Mississippi Department of Corrections.

## **FACTS**

According to the trial testimony, on May 23, 2005, Mississippi Bureau of Narcotics Agents Wes Stapp and Barry McWhirter, searched both the person and the vehicle of a paid, confidential informant by the name of Bobby Wayne Goodin. Tr. 36. Agents then placed audio and video equipment on him and sent him off with forty dollars (\$40.00) to attempt to make controlled buy of cocaine on Miller Avenue in Louisville. Tr. 37-38.

Goodin testified that when he arrived at the location, he was met by a male subject. Goodin asked for a man named "Chris," but the individual stated Chris was not there, but that he was the only one doing anything. Goodin took that to mean the man understood Goodin was there to buy cocaine. Goodin told him he wanted \$40 worth of crack. The man said he

only had \$30 worth. The man then laid the drugs on the coffee table and Goodin gave him the money. The man gave him a five dollar bill and five one dollar bills as change. Goodin identified the appellant, Selentro Miller, as the man who sold him the cocaine. Tr. 54.

Goodin then met with Agent Stapp and Agent McWhirter and gave them the substance he claimed he purchased and the change. Goodin testified he was again searched and the agents retrieved the audio and video equipment. Tr. 55. Goodin further identified Exhibit 2 as an accurate depiction of the transaction that day. Tr. 56.

Goodin admitted to an extensive criminal past during cross-examination. Besides the fact he was paid one hundred dollars (\$100.00) to make this purchase, Goodin testified he had been an informant since 1995. He claimed he became an informant because of what drugs did to his life. However, he admitted he was charged with a narcotics offense in Florida in 2003, well after he became an informant. Tr. 58. Goodin also admitted to being charged with embezzlement in 1995 here in Mississippi, as well as a burglary charge in New Mexico. Tr. 59.

The testimony of the MBN agent and Goodin also conflicted. Agent Stapp testified he did not look in Goodin's shoes or his socks prior to the buy. Tr. 44. He also stated he only searched Goodin's truck for six or eight minutes. He admitted there were several places he did not search which could have hidden the small rocks of cocaine. Tr. 43. Goodin, on the other hand, testified he was searched pretty thoroughly, as agents made him take off his shoes and made him roll up his socks. Tr. 60. Goodin also stated the agents "pretty much turned it upside down," searching of his car for twenty-five and thirty minutes. Tr. 59. He

also admitted he did not know if he would have been paid if he came back empty-handed, as he had never done so. Tr. 60.

After Goodin turned over the substance he claimed he purchased from Miller to Agent Stapp, the substance was sent to the Mississippi Crime Laboratory for analysis. Tr. 48. The substance was tested and found to be 0.17 gram of crack cocaine. Tr. 50.

The State also called Louisville Police Office Gerald Hayes, who testified he has known Selentro Miller since the Fifth Grade. He was asked by Agent McWhirter to view a videotape of a drug transaction to see if he could identify anyone in the video. Tr. 63. Officer Hayes stated the subject in the video was the appellant, Selentro Miller. Tr. 64.

### **SUMMARY OF THE ARGUMENT**

The verdict in this case was against the overwhelming weight of the evidence. The evidence presented failed to establish beyond a reasonable doubt the charge of sale of cocaine, as the video admitted into evidence did not show any exchange of money for drugs. Even if drugs were purchased from this location, other people are present and seen in the video. Anyone present could have provided the drugs to the paid informant. Furthermore, the paid informant's credibility was highly suspect, as he had an extensive criminal record and was not thoroughly searched prior to the alleged sale. Allowing the verdict to stand on this evidence would manifest an extreme injustice.

## ARGUMENT

### THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE

In trial counsel's Motion for New Trial or in the Alternative JNOV, trial counsel specifically argued that the jury's verdict was against the overwhelming weight of the evidence. C.P. 45, R.E. 13. The trial judge denied this motion. C.P. 48, R.E. 15. The trial judge erred in refusing to grant this motion.

"In determining whether 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 convinced that the circuit court has abused its discretion in failing to grant a new trial." *Herring v. State*, 691 So.2d 948, 957 (Miss.1997). "Only in those cases where the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice will this Court disturb it on appeal." *Id.* See also *Benson v. State*, 551 So.2d 188, 193 (Miss.1989); *McFee v. State*, 511 So.2d 130, 133-34 (Miss.1987).

In the case at bar, the paid informant's testimony was highly suspect. As set forth in the facts above, his testimony contradicted Agent Stapp. (Agent McWhirter was not even called to testify.) He was not thoroughly searched and could have easily hidden the small rocks in his shoes or in several small hiding places in his truck. Goodin's hands were not visible during the entire time in the video. (See Ex. 2). Given the angle of the video, it is entirely reasonable to conclude any of the other individuals present at the location could have



provided the informant the drugs, if, in fact, he even received any drugs at that location. Since he was not thoroughly searched, the informant could have had the drugs on his person before the controlled buy even began.

The video did not show any drugs being transferred to Goodin or any money being transferred to Miller from Goodin. Miller's hands are also not seen in the video. Ex. 2. All the video appears to depict is Miller getting change for the informant. Accordingly, the informant's trustworthiness was absolutely essential to the case, as his testimony is the only evidence a drug sale occurred. As the record reflects, Goodin was had an extensive criminal record. Tr. 58-60. Goodin also claimed he became an informant in 1995 because of what narcotics did to him. However, he was still involved in narcotics as late as 2003 when he was charged in Florida. Tr. 58. Goodin's testimony was simply not credible. No reasonable jury could put any faith into Goodin's testimony.

Normally, the jury weighs the credibility of each witness. *Wetz v. State*, 503 So.2d 803, 812 (Miss. 1987). However, this can be set aside by this Court when the verdict is contrary to the overwhelming weight of the evidence.

A reversal on the grounds that the verdict was against the overwhelming weight of the evidence, "unlike a reversal based on insufficient evidence, does not mean that acquittal was the only proper verdict." *McQueen v. State*, 423 So.2d 800, 803 (Miss.1982). Rather, as the "thirteenth juror," the court simply disagrees with the jury's resolution of the conflicting testimony. *Id.* This difference of opinion does not signify acquittal any more than a disagreement among the jurors themselves. *Id.* Instead, the proper remedy is to grant a new trial.

*Bush v. State*, 895 So.2d 836, 844 (Miss. 2005).

Finally, at Miller's sentencing, he told the court he was not a drug dealer and asked for mercy since this was the first time he had ever been to court. Tr. 87-88, R.E. 10-11. Instead, the court sentenced him to twenty (20) years. To affirm this case, and sentence this first-time offender to twenty years based solely on the testimony of an incredible, paid informant, would certainly sanction an unconscionable injustice. See *White v. State*, 761 So.2d 221 ¶40-43 (Miss.App. 2000). Miller would respectfully submit that the evidence in this case did not warrant the verdict of guilty by the jury. Selentro Miller should be entitled to a new trial.

### **CONCLUSION**

Given the facts presented in the trial below, the verdict was contrary to the overwhelming weight of the evidence. Selentro Miller is entitled to have his sale of cocaine conviction reversed and remanded for a new trial.

Respectfully submitted,  
MISSISSIPPI OFFICE OF INDIGENT APPEALS  
For Selentro Miller, Appellant

By:

  
\_\_\_\_\_  
Leslie S. Lee

**CERTIFICATE**

I, Leslie S. Lee, do hereby certify that I have this the 17<sup>th</sup> day of October, 2007, mailed a true and correct copy of the above and foregoing Brief Of Appellant, by United States mail, postage paid, to the following:

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