SCT RE

2007-KA-01944-

TABLE OF AUTHORITIES

Rules

(Page No.)

Cases

ARGUMENT

THE COURT ERRED IN SUSTAINING THE PROSECUTION'S RELEVANCY OBJECTION TO A TOPIC PREVIOUSLY INTRODUCED INTO EVIDENCE

Appellee's brief first states that the issue was waived because (p. 9, Brief for the Appellee):

> When given an opportunity to object to the trial court's ruling on grounds being argued in appeal, neither Miller or his counsel did so.

The Court's ruling (that Appellant allegedly failed to object to) sustained Appellee's objection to admissibility during direct examination of Appellant during the presentation of Appellant's case-in-chief. To require objections to adverse rulings to objections to preserve an issue for appeal would logically require infinite numbers of objections, a absurd result.

On the merits, Appellee asserts that (Brief of the Appellee, p.11):

> When given an opportunity to make a proffer as to the relevance of further testimony about the circumstances involved in the assault of Miller in the jail, there was no response from Miller.

This is untrue. At the instance of the trial court (T-84), the proffer was made at a bench conference. After hearing the proffer, the Court reiterated its ruling:

> BY MR. BROOKS: Your Honor, we're going to object to something that happened after he was arrested. It doesn't have any relevance to this case.
> BY THE COURT: Sustained. Objection sustained.
> BY MR. HARRIS: Your Honor, could I make a proffer as to the relevance of the testimony?
> BY THE COURT: All right. Approach the bench.
> **(THE ATTORNEYS APPROACHED THE BENCH WHERE A**

SHORT CONFERENCE WAS HELD OUTSIDE THE HEARING OF THE COURT REPORTER AND THE JURY)
BY THE COURT: The objection's sustained as to relevance.

Although the content of the proffer was not preserved for the record, the record demonstrates that the proffer was made. The Court found it unpersuasive and so ruled.

The point in issue, however is that the door had **already** been opened to the topic of Appellant's jail beating and what was said then by the testimony of prosecution witness Investigator Steven Crotwell (T-67):

Q. You - - uh - - did you hear anything about, after Michael got arrested, him getting beat up while he was in jail?
A. Yes, sir. I did.
Q. That pretty much happened right after he got in. Didn't it?
Q. Several days later?
A. Several - - - several weeks or several days, I think, later.
Q. Several days later?
A. Yes, sir.
Q. All right. And was Deon Ratliff still at that - -
A. He was
Q. - - Scott County at that time? Okay. Do you know if anybody was convicted on that?
A. They were.

The prosecution did not object.

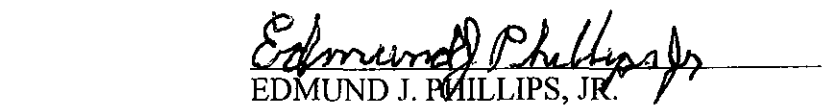
Bingham v. State, 434 So. 200, 225, 226 (1983) holds that cross examination of one party's witness opens "the door" to testimony by another party's witness on the same topic, even though both were elicited by the same party's counsel. Thus the trial court erred in sustaining Appellee's objection to the testimony.

The device of "opening a door" to a topic or subject is regularly used by our courts to admit otherwise inadmissible evidence of all types whether or not the first

evidence on the same topic would have been inadmissible if objected to and no matter which party introduces the topic first. Phillips v. Illinois Central R. R. Co., 797 So. 2d 231 (Miss. App. 2000); Booker v. State; 745 So. 2d 850 (Miss. App. 1998); Eakes v. State, 665 So. 2d 852 (Miss. 1995); Brown v. State, 85 Miss. 511, 37 So. 957 (1905); Jones v. State, 342 So. 2d 735 (Miss. 1977).

Given the broad definition of relevance or relevancy (M.R.E. 401) (see discussion in Brief for the Appellant) and its general interpretation to admit evidence, the testimony was relevant. Whether it was relevant or not, the door had certainly been opened and the testimony was admissible.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

I, Edmund J. Phillips, Jr., Counsel for the Appellant, do hereby certify that on this date a true and exact copy of the Reply Brief to Appellee's Brief was mailed to the Honorable Mark Duncan, P.O. Box 603, Philadelphia, MS 39350, District Attorney, the Honorable Marcus D. Gordon, P.O. Box 220, Decatur, MS 39327, Circuit Court Judge and the Honorable Jim Hood, P.O. Box 220, Jackson, MS 39205, Attorney General for the State of Mississippi.

DATED: October 23, 2008.

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