

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

**COPY**

MICHAEL BENARD MILLER

**FILED**

APPELLANT

AUG 21 2008

VS.

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SUPREME COURT  
COURT OF APPEALS

NO. 2007-KA-1994

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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**BRIEF FOR THE APPELLEE**

**PROCEDURAL HISTORY:**

On October 10, 2007, Michael Benard Miller, "Miller" was tried for aggravated assault before a Scott County Circuit Court jury, the Honorable Marcus Gordan presiding. R. 1. Miller was found guilty and given a twelve year sentence in the custody of the Mississippi Department of Corrections. R. 111; C.P. 20. From that conviction he appealed to the Mississippi Supreme Court. C.P. 34.

**ISSUE ON APPEAL**

**I.**

**DID THE TRIAL COURT ERR IN SUSTAINING AN  
OBJECTION TO TESTIMONY ABOUT EVIDENCE NOT  
SHOWN RELEVANT TO THE CHARGE?**

## **STATEMENT OF THE FACTS**

Miller was indicted for aggravated assault of Ms. Fatasha Runnels on or about February 18, 2007 by a Scott County grand jury. C.P. 1.

On October 10, 2007, Miller was tried for aggravated assault of Ms. Runnels before a Scott County Circuit Court jury, the Honorable Marcus Gordan presiding. R. 1. Miller was represented by Mr. James E. Smith, III, and Mr. Shawn Harris with the felony indigent counsel's office. R. 1.

Ms. Fatasha Runnels testified that she lived in a mobile home with her two small children. This was in Morton, Scott County, Mississippi. R. 14. Her sister Susie Brown also was living with them. Runnels testified that she had been dating Miller for a few months. However, she had also been in contact with the father of her two children, Mr. Deon Ratliff. R. 19. Although Ratliff was in prison, she had been in communication with him. He was incarcerated in the Scott County jail. R. 33-35.

On February 18, 2007, the evening at issue, Runnels informed Miller that she did not wish to continue their relationship. This was in part the result of Ratliff's objections to her continuing this relationship. Miller became jealous and angry. R. 17. Miller got upset with Runnels and argued loudly with her.

Although Runnels asked Miller to leave, he remained in her trailer where Runnels and her sister were watching television. They were watching Desperate Housewives. Miller was wearing a jacket. R. 29. Runnels identified the jacket in exhibit 13 as being the jacket Miller was wearing at that time. R. 29.

When Runnels went outside to her washer and drier, Miller followed her. R. 19. She went outside to get away from him. He was still upset over her wanting to end their relationship. He asked her for the cell phone he had given her. He broke it into two pieces. R. 19. He then grabbed

her neck. She briefly broke her and again asked him to leave.

He attacked her from behind with his hands and fist. She was knocked down on the ground. He beat her with something hard. She found herself on her stomach. She could not see behind her back. To protect her face she used her hand which he bent back. Her fingers were broken. He continued hitting her.

Runnels tried to act like she was dying "so he would leave." R. 21. After hearing "something fall to the ground" behind her, she heard his truck leave. R. 22.

Runnels testified that she was in such pain, she could not stand. She crawled on the ground. She was covered in blood. She crawled out and called for her sister. When Susie came to check on her, she asked her to call 911 for help. She needed medical assistance. Runnels testified that the six different photographs admitted into evidence were a "true and correct representation of the injuries received from Miller." R. 26.

On cross examination, Ms. Runnels testified that Deon Ratliff told her he did not have anything to do with the assault on Miller. R. 34.

Runnels identified Miller in the court room as the person who attacked and severely beat her. R. 28.

Mr. Susie Brown testified that Miller visited her sister, "Tasha," on the night in question. They had some kind of argument. They were watching Desperate Housewives together. "Tasha" went outside. Miller followed her.

When Susie heard her sister call her from outside, she saw her on the ground, "covered up with blood over her head." R. 41. She testified that Miller had on a jacket. R. 42. She identified exhibit 13 as being the jacket he had on that night. R. 42.

Ms. Ree Alford, a paramedic with Emergystat, an ambulance service, testified to going to

Runnel's trailer. A woman holding a child directed her to where the victim was. The victim was laying on the ground covered in blood. "Blood was everywhere." R. 49.

"Runnel's face was swollen, eyes were completely shut." R. 49. She had facial, neck, hand and head trauma. This included an "open skull fracture" in the back of her head. She had facial fractures, and an egg size knot on her face. There were "pieces of white plastic parts in her hair-all in her hair." R. 49-50.

Ms. Runnels was taken to Scott Regional hospital. R. 51. From there she was taken to University Hospital in Jackson for treatment. R. 52.

Mr. Steve Crotwell, an investigator with the Scott County Sheriff's Office, testified to going to the scene of the crime. He took photographs of some pipes and a broken open fan lying on the ground. The pipe was hard white plastic. He believed they were probably pieces of the broken up fan on the ground. It was also white. R. 56-57. He also photographed the injuries to the face and hands of Ms. Runnels. Crotwell also took a jacket in Miller's possession which appeared to have blood on it. R. 63. It was taken to a state crime lab but was told that it would take a long time for it to be tested. Crotwell then took it to a private crime lab in Brandon operated by Dr. Scales. R. 64. He also testified to seeing that Ratliff, the father of Runnel's children, was in jail when the assault on Runnels occurred. R. 64.

On cross examination, Crotwell was questioned about Miller being "beaten up" in jail. He testified that while Ratliff was in jail at the time of Miller's incarceration, he had been placed in a separate portion of the jail from him. Ratliff also was not convicted, as were several others, of having assaulted Miller. R. 67-68.

Exhibit 1 through 9 were photographs of the victim, Ms. Runnels. They were taken by Investigator Steve Crotwell.. Exhibit 1 shows injuries to the right hand and wrist of Fatasha



Runnells. Her fingers were broken and her hand was in a cast at the time. Exhibit 2 shows injuries to her left hand. Photograph three shows bruises and cuts on the back of her neck. Four and five show many bruises and injuries to her face and forehead.. Seven, eight and nine show broken pieces of a fan as well as pieces of pipe on the ground. R. 26-57. Exhibit 13 was a bag containing the jacket Runnells and her sister Brown testified was worn by Miller the night of the assault.

Dr. R. W. Scales testified that he tested the jacket submitted to his laboratory for the presence of human blood. He determined by scientific tests that it was human blood. "It was positive for human blood." R. 73.

At the conclusion of the state's case, the trial court overruled a motion for a directed verdict. R. 77.

Miller testified in his own behalf. R. 78-89. He denied having been at Runnel's trailer or having beaten her up on the night in question. He denied having dated Runnells or having a romantic relationship. R. 80. Miller testified that he was not wearing the jacket in question at the crime scene. Miller had no explanation for why both Runnells and Brown would accuse him of assaulting her on the night in question. R. 81.

When Miller was questioned about who assaulted him in the jail, he answered "by four guys." R. 84. After the trial court sustained an objection to more testimony about the jail assault, Miller's counsel requested permission to make a proffer.

A bench conference was held. After which, the trial court again sustained the objection to this issue on grounds of "relevance." R. 84. Miller made no statement for the record as to relevance of this line of questioning.

During closing argument, Miller's counsel argued before that jury by implication that Ratliff was somehow responsible for the assault upon Runnells, the mother of his children. R. 106.

Miller was found guilty and given a twelve year sentence in the custody of the Mississippi Department of Corrections. .R. 111; C.P. 20. Relevancy issues concerning the jail assault were not raised in his motion for a new trial. C.P. 23. The trial court denied the motion for a new trial. C.P. 25. From that conviction Miller appealed to the Mississippi Supreme Court. C.P. 34.

### **SUMMARY OF THE ARGUMENT**

The record reflects that this issue was waived. **Haddox v. State**, 636 So. 2d 1229, 1240 (Miss. 1994). There was no objection made during the trial about how the prosecution had allegedly opened up additional testimony about the jail assault. R. 84. Nor was this issue raised in Miller's motion for a new trial. C.P. 23.

In addition, Miller did not show how additional testimony about the circumstances involved in his having been assaulted by persons other than Ratliff, his romantic rival, were relevant to any issue of significance to the charges against him in the instant cause. **Wilson v. State** 661 So.2d 1109, 1111 -1112 (Miss. 1993).

The record reflects that when given an opportunity to make a proffer of how testimony about the jail assault of Miller was relevant to the charges against him, he did not do so. R. 84. In addition, there was already uncontested testimony indicating that Ratliff was separated from Miller in jail, and not charged, as were others, for assaulting Miller. R. 67-68.

The record reflects credible, corroborated evidence in support of Miller's conviction for the aggravated assault of Ms. Runnels on February 18 , 2007. Runnels identified Miller as the person who assaulted her. R. 28. Runnels was corroborated by her sister as to Miller being present at her trailer when Runnels was severely beaten. R. 38. She also corroborated her in testifying that Miller was wearing the jacket on which human blood was found the night of the assault. R. 29; 42.

Miller testified that he was not dating Runnels, and was not present at her trailer when she was assaulted. He also denied wearing the jacket he admitted was his that had human blood on it the night of the incident. R. 78-91.

In short, the record reflects that Miller did not met his burden of proof for showing the relevancy of additional testimony about the jail assault to the charges against him.

## ARGUMENT

### PROPOSITION I

**THIS ISSUE WAS WAIVED. AND MILLER DID NOT MEET HIS BURDEN FOR SHOWING THE RELEVANCY OF TESTIMONY ABOUT THE JAIL ASSAULT TO THE CHARGES AGAINST HIM IN THE INSTANT CAUSE.**

Miller believes that the trial court erred in sustaining an objection. It was an objection by the prosecution to testimony from Miller on direct examination. R. 84. It was in answer to questions about the circumstances under which Miller was assaulted while incarcerated. Miller believes that the prosecution opened up this issue by questioning Investigator Steven Crotwell on cross examination about the circumstances involved in Miller's being assaulted while in prison. Appellant's brief page 1-7.

To the contrary, the appellee would submit that this issue was waived. The record reflects that when given an opportunity to object to the trial court's ruling on grounds being argued on appeal, neither Miller or his counsel did so. R. 84. This jail assault issue was not mentioned in Miller's motion for a new trial. C.P. 23.

In **Haddox v. State**, 636 So. 2d 1229, 1240 (Miss. 1994), the Court stated that issues raised on appeal which were not raised as an objection at trial were waived.

Because these arguments are not preserved for appeal, this Court cannot reverse based upon them. The assertion on appeal of grounds for an objection which was not the assertion at trial is not an issue properly preserved on appeal. **Baine v. State**, 606 So. 2d 1076 (Miss. 1992); **Willie v. State**, 585 So. 2d 660, 671 (Miss. 1991); **Crawford v. State**, 515 So. 2d 936, 938 (Miss. 1987);...

In addition, the record reflects no grounds for indicating the relevance of this testimony. See M .R.E. 401, 402 and 403. The record reflects that after the trial court sustained an objection, a bench conference was held outside the hearing of the jury. It was not recorded by the court reporter.

After the conference, the trial court affirmed his sustaining of the objection on grounds of “relevancy.” The record reflects that Miller did not include any proffer in the record as to how this testimony would have been relevant. R. 84. It was not included in Miller’s motion for a new trial. C.P. 23.

Q. Uh—at some point in time were you jumped on in jail?

A. Yes, it was by four guys.

Q. And when did—who—

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.

Court: Sustained. Objection sustained.

Harris: Your honor, could I make a proffer as to the relevance of the testimony?

Court: All right. Approach the bench. (Bench conference outside presence of jury and not recorded)

Court: **The objection’s sustained as to relevance.** R. 84. (emphasis by appellee)

In addition, Investigator Steve Crotwell testified that while Deon Ratliff was in jail at the time Miller was taken into custody, that he was purposefully separated from Miller’s cell. He also testified that Ratliff was not convicted, as were other inmates, of having assaulted Miller within a few days of his being incarcerated.

Q. Do you know if anybody was convicted on that? (The assaulting of Miller.)

A. They were.

Q. It was a bunch of folks. Wasn’t it?

A. Two or three.

Q. Yes, sir. And Deon Ratliff didn’t have access to where Michael Miller was. Did he?

**A. No, sir.**

**Q. He was not one of those convicted?**

**A. No, sir. He was not.**

**Q.—of the assault of Michael?**

**A. He was separated intentionally.**

**Q. Yes, sir. R. 67-68. (Emphasis by Appellee)**

As shown with cites to the record, 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. Neither did Miller include any proffer or evidence in support of any such proffer in his post conviction motion for a new trial. C.P. 23.

In **Branch v. State**, 347 So. 2d 957, 958 (Miss. 1977), this Court state that ‘[t]here is a presumption that the judgment of the trial court is correct.’ The burden is on the Appellant to demonstrate some reversible error to this court.’

There is a presumption that the judgment of the trial court is correct, and the burden is on the appellant to demonstrate some reversible error to this Court. It is the appellant’s duty to see that all matters necessary to his appeal, such as exhibits, witnesses testimony and so forth, are included in the record, and he may not complain of his own failure in that regard. The Court may only act on the record presented to it. **Shelton v. Kindred**, 279 So. 2d 642, 644 (Miss. 1972)

In **Wilson v. State** 661 So.2d 1109, 1111 -1112 (Miss. 1993), the Supreme Court found that testimony about the defendant’s boyfriend being charged with a drug offense was not “relevant” to the issues involved in the charges against Wilson.

Relevant evidence” is defined by Rule 401 of the Mississippi Rules of Evidence as evidence “having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” M.R.E. 401. Furthermore, Rule 402 states that “evidence which is not relevant is not admissible.” M.R.E. 402. Clearly, the fact that the defendant's boyfriend had been charged with a drug offense had absolutely no

“tendency to make the existence of any fact that is of consequence to the determination of the action” more or less probable. Rule 402 commands that this evidence be therefore excluded. It is also well established that “guilt by association is neither a recognized nor tolerable concept in our criminal law.” \*1112 (Cite as: 661 So.2d 1109, \*1112) **Davis v. State**, 586 So.2d 817, 821 (Miss.1991). Any attempt by the prosecutor to use the relationship between Wilson and her boyfriend to infer her guilt was improper and should not have been allowed.

The record reflects that although Miller did not make any proffer as to how additional testimony about the jail assault was relevant, this did not prevent Miller’s counsel from arguing during closing argument by innuendo that Radliff was somehow responsible for the assault upon Ms. Runnels. R. 106.

In **Bingham v. State**, 434 So. 2d 220, 226 (Miss. 1983) relied upon by counsel for Miller, while the court found no error in admitting rebuttal testimony from the sheriff, the record reflects that the prosecution had evidence of a prior inconsistent statement made by the witness prior to trial. There was no claim of any prior inconsistent statements in the instant cause. R. 84.

In **Cousar v. State** 855 So.2d 993, 998 -999 (¶16-¶17)(Miss. 2003), the Court found that the uncorroborated testimony of a single witness was sufficient for supporting a conviction. This was in a cocaine purchase case where there was no photographs or video of the alleged purchase.

¶ 16. Cousar argues that the trial court erred in denying his motions for a directed verdict or a J.N.O.V. because he should not be found guilty by the uncorroborated testimony of a single witness in a case where there was neither video nor photographs taken of the alleged cocaine purchase. He also argues that there was insufficient evidence for determining the identity of the mysterious Coop. However, this Court has stated that a single witness's \*999

(Cite as: 855 So.2d 993, \*999) uncorroborated testimony is sufficient to support a conviction:

With this reasoning in mind, the Court holds that the testimony of Conner was legally sufficient to support Doby's conviction for the sale of cocaine. This Court recognizes the rule that persons may be found guilty on the uncorroborated testimony of a single witness. See **Ragland v. State**, 403 So.2d 146 (Miss.1981). **Doby v. State**, 532 So.2d 584, 591 (Miss.1988).

¶ 17. In determining what should be considered in assessing the validity of identification testimony, this Court has stated as follows: “we consider ‘whether or not substantial evidence supports the trial court’s findings that, considering the totality of the circumstances, in-court identification testimony was not impermissibly tainted’ and we will disturb the findings of the lower court ‘only where there is an absence of substantial credible evidence supporting it.’ ” **McDowell v. State**, 807 So.2d 413, 418-19 (Miss.2001) (citing **Brooks v. State**, 748 So.2d 736, 741 (Miss.1999)).

In the instant cause, Runnels was corroborated by her sister, Ms. Susie Brown. Her sister corroborated her as to Miller being with Runnels at her trailer on February 18, 2007. R. 37-45. Brown corroborated her in testifying that although Runnels asked Miller to leave, he would not do so. R. 40. She corroborated her as to Miller arguing with her and following her out of the trailer. She corroborated her that when she next saw Runnels she was laying on the ground “covered up with blood on her head, all over her head and her hands, too..” R. 41. And she corroborated her as to the fact that Miller was wearing the jacket which tested positive for the presence of human blood. R. 42-43.

In addition, Ms. Ree Alford testified that there was “pieces of white plastic parts in her hair—all in her hair.” Alford was the first responder at the scene of the alleged assault. She was referring to the bloody and serious injuries she observed on Runnels head, face, neck and hands on the night in question. Alford testified to seeing “an open skull fracture” along with “fractures of the face.” R. 49-50. Investigator Steve Crotwell found a bent plastic pipe at the scene of the assault. It was “white.” R. 60. He testified that it looked like the pipe was used to beat the victim. R. 65.

Runnels testified to being beaten “with something” hard from behind her back. R. 20. Mr. Crotwell identified photo exhibits 7, 8 and 9 as being what he found at the crime scene. Photo seven and nine show the broken up pieces of a white oscillating fan, and eight shows the broken pieces



of white pipe which were broken off from the fan. R. 56.

Miller's testimony made his credibility an issue for the jury to consider along with all the other evidence. In **Mamon v. State**, 724 So. 2d 878, 881 (Miss. 1998), the Supreme Court stated that the jury is responsible for resolving the credibility of witnesses.

Consequently, the record reflects more than sufficient, credible corroborated evidence in support of the Miller's aggravated assault conviction.

The Appellee would submit that the record reflects that Miller did not met his burden of proof for showing the relevance of any additional testimony about the circumstances involved in the assault upon Miller which occurred after his assault upon Ms. Runnels.

Therefore, the Appellee would submit that this issue was not only waived, it is also lacking in merit.

**CONCLUSION**

The trial court's sustaining of the objection on grounds of "relevancy" should be affirmed along with Miller's conviction for the reasons cited in this brief.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

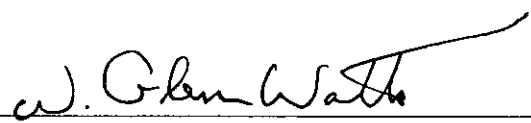
I, W. Glenn Watts, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 21st day of August, 2008.

  
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