

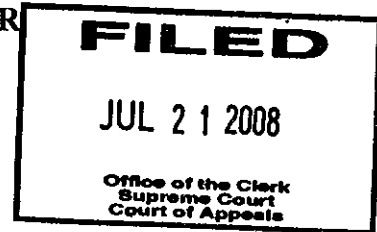
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IN THE SUPREME COURT OF MISSISSIPPI

MICHAEL BENARD MILLER

v.

STATE OF MISSISSIPPI



NO. 2007-KA-01994-SCT

Appeal from Circuit Court of Scott County, Mississippi

BRIEF FOR APPELLANT

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Oral Argument is Not Requested.

CERTIFICATE OF INTERESTED PERSON

MICHAEL BENARD MILLER

v.

STATE OF MISSISSIPPI

NO. 2007-KA-01994-SCT

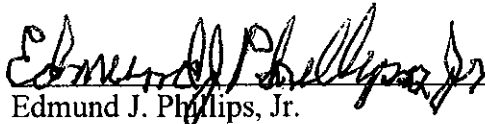
The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or judges of the Court of Appeals may evaluate possible disqualification or recusal.

**Honorable Mark Duncan
District Attorney
P.O. Box 603
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**Honorable Marcus D. Gordon
Circuit Court Judge
P.O. Box 220
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**Honorable Jim Hood
Attorney General of MS
P.O. Box 220
Jackson, MS 39205**

**Michael Benard Miller
APPELLANT**

A handwritten signature in black ink, appearing to read "Edmund J. Phillips, Jr.", written over a horizontal line.

Edmund J. Phillips, Jr.
Attorney of Record for Michael Benard Miller

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STATEMENT OF THE ISSUES

The Court erred in sustaining the prosecution's relevancy objection to a objection to a topic previously introduced.

STATEMENT OF THE CASE

Michael Benard Miller appeals his conviction from the Circuit Court of Scott County, Mississippi of the crime of aggravated assault and sentence of a term of twelve (12) years in the custody of the Mississippi Department of Corrections.

Fatasha Runnels, the alleged victim, was the first prosecution witness. She testified that she lived in a mobile home with her two children (ages of 3 and 1) and her (T-23) mentally defective sister, Susie Brown, that the father of her children was an ex-convict named Deon Ratliff, that she had been dating Appellant about two months (T-16) before the date of the incident in question (February 18, 2007), that he visited her on that day, that she told him she was breaking up with him (T-17) in favor of Ratliff (at Ratliff's request), that Ratliff was then in jail, that they watched television (T-18), that she went outside and Appellant (T-36) attacked and beat her (T-19, 20) breaking her fingers and hitting her on the head, that her sister came outside and at Runnels' request called the police, (T-26) that certain photographs of Appellant were accurate representations of her injuries (they were introduced into evidence), that Ratliff had been in prison since January 31. 2005 (T-30), that Ratliff had asked in letters and in person that she stop dating Appellant, that shortly before the beating she had received a letter (T-36):

A. No, sir. Uh - - I had got a letter in my mailbox, supposed to be from somebody named Missy that I've never heard of - - uh - telling me that she knew where I lived, that she was pregnant with Deon's baby, that I need - - that I should stay with Mike or I was going to get my butt whipped. That's what it said.

that a strange car had been passing her house and stopping (T-35, 36), that she had discussed with Appellant her concerns about the vehicle, and they searched for it.

Susie Brown testified that on the night her sister was injured, Appellant came to visit, her sister and Appellant argued with each other and watched television (T-39, 40), that her sister went outside and Appellant followed, that after a while she heard a scream, went and found her sister bleeding and beaten and went across the road to call police and ambulance (T-41) (Appellant was not there) and that Ratliff was at the time of trial living in the house with her and her sister.

Ree Alford, ambulance paramedic, testified that she answered the ambulance request on the night of the incident in question, that Natasha Runnels (T-49) had facial and head trauma including a skull fracture, that she remained fully conscious throughout, that she was taken to the University Hospital, Jackson, Mississippi.

Sheriff's office investigator Steven Crotwell testified that he took the photographs of Runnels that had been introduced into evidence, (T-55) that he had investigated the scene of the incident in question (T-56) had taken photographs of a pipe and box fan (photos introduced into evidence) that Appellant's fingerprints were not on them (T-58) that the fingerprints on them were not "of value", that he searched Appellant's residence

and found a jacket, which he ultimately took to Dr. Bo Scales' laboratory in Brandon, Mississippi (T-64), that right after Appellant was arrested, at a time when Ratliff was in jail, several other prisoners beat Appellant severely (T-67).

Dr. Bo Scales testified that he operates a laboratory that does DNA analysis (T-69), that his laboratory was accredited and that he was a forensic expert recognized as such in the Courts of Mississippi, that he had examined Appellant's jacket and found human blood on it (T-72), that the primary function of his lab is (T-75) DNA analysis (T-76), that he had been able to perform DNA analysis "with a lot less blood than that", that he could have performed a DNA test, but was not requested by the Scott County Sheriff's office to do so.

The State rested: Appellant's motion for a directed verdict was denied (T-77).

Appellant testified that Fatasha Runnels told him she had received a letter threatening to beat her up (T-80), that he had visited Runnels the day she was beaten but had left before any violence occurred and had not returned (T-83).

The prosecutor objected to testimony about him being beaten in jail what his attackers said and the Court sustained the objection (see argument).

Willie Miller, Appellant's mother, testified he had been at her house when the incident occurred, that he later went to a store for about fifteen minutes and when he returned the police were waiting at her house and arrested him (T-90).

Appellant's father, John Miller, echoed his wife's testimony.

Rev. Willie Jones, Appellant's pastor, testified Appellant had a good reputation and was not known for engaging in violence (T-96).

SUMMARY OF THE ARGUMENT

If one party's witness testifies about a topic, even on cross-examination, the door is thereby opened for the other party to introduce evidence on the same topic, over a relevancy objection.

ARGUMENT

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

INTO EVIDENCE

On cross-examination, prosecution witness Steven Crotwell testified as follows (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.

During the direct examination of Appellant, the following colloquy occurred (T-83, 84):

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

A. Yes. I was, by four guys.

Q. And when did - - who - -

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.

The Court held that the testimony was not relevant.

The Court erred because the cross-examination of prosecution witness Crotwell "opened the door" to further testimony on the same subject, even though both were elicited by defense counsel. *Bingham v. State*, 434 So. 2d 220, 225, 226 (1983).

In *Bingham*, the Court held (434 So. 2d 226)

The state clearly elicited from Lawson that he told the sheriff on the night of the incident that he had seen the shooting take place. This opened the door for the rebuttal testimony of Sheriff Noble who asserted that Lawson stated on the night of the incident that he did not actually see the shooting. There was no error in the admission of Sheriff Noble's rebuttal testimony.

Thus, cross examination of one party's witness opened the door to testimony by the other party's witness on the same topic, even though both were elicited by the same party's counsel.

Further, the general rule is to permit introduction of as much evidence as possible over relevancy objection. *Ferreira*, Miss. Evidence (4th Ed.) p. 42 states:

The threshold for determining relevancy pursuant to the rule is minimal. The rule's broad phrase "any tendency" is considered


to be a permissive call for admissibility of evidence. Background facts which per se have no tendency to prove or disprove a proposition at issue may, nonetheless, be admissible under Rule 401 simply on the theory that, by amplifying the evidence, the assist the trier of fact. 2

The Court' sustaining the prosecution's objection was error and the verdict should be overturned.

CONCLUSION

The verdict should be overturned.


RESPECTFULLY SUBMITTED,


EDMUND J. PHILLIPS, JR.
Attorney for Appellant

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 Brief for Appellant 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: July 21, 2008.


EDMUND J. PHILLIPS, JR.
Attorney for Appellant