

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

**COPY**

**CHRIS A. MILLER AND JOHNNY L. MILLER**  
**a/k/a SNAPPER**

**APPELLANTS**

**FILED**

**MAR 20 2008**

**NO.2007-KA-02019-COA**

**V.**

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COURT OF APPEALS

**STATE OF MISSISSIPPI**

**APPELLEE**

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**AMENDED**  
**BRIEF OF THE APPELLANT**

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**ORAL ARGUMENT NOT REQUESTED**

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**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. Chris Miller
3. Johnny L. Miller a/k/a Snapper, Appellant
4. Doug Evans and the Winston County District Attorneys Office
5. Honorable Joseph H. Loper, Jr.

THIS the 20<sup>th</sup> day of March 2008.

Respectfully submitted,

TESELYN MELTON FUNCHES  
For Johnny L. Miller, Appellant

By:



Teselyn Melton Funches  
Counsel for Appellant

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**BRIEF OF THE APPELLANT**

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**STATEMENT OF THE ISSUES**

- I. THE COURT ERRED IN DENYING JOHNNY MILLER'S MOTION FOR DIRECTED VERDICT.**
- II. THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.**

**STATEMENT OF THE CASE**

Johnny "Snapper" Miller, along with Christopher Miller, was indicted for selling cocaine. (C.P. 4-5; R.E.32-33) The matter proceeded to a jury trial in the Circuit Court of Winston County, Mississippi and both men were found guilty. (C.P. 124-125; 127; R.E.37) Johnny Miller, charged as a habitual offender, received an enhanced sentence of thirty (30)

years without parole and was ordered to pay a fine in the amount of five thousand dollars (\$5,000)<sup>1</sup>. (C.P. 127; R.E. 38-39; Tr. 144). Johnny Miller is currently incarcerated with the Mississippi Department of Corrections. Aggrieved, Johnny Miller now appeals his conviction.

### **FACTS**

This appeal comes before the Court as a result of the conviction of Johnny L. “Snapper” Miller for the sale of cocaine. (C.P. 127; R.E. 38-39; Tr. 144). According to the testimony presented at trial, on June 14, 2005, a confidential police informant and alleged recovering drug addict named Bobby Wayne Goodin met with Wes Strap and Barry McWhirter, agents of the Mississippi Bureau of Narcotics (“MBN”) and made plans to purchase drugs in Winston County, Mississippi. (Tr. 44). Goodin was wired with audio and video surveillance equipment and given one hundred dollars (\$100) to purchase drugs. (Tr. 44-45 and 58). Goodin then traveled toward Miller Avenue. (Tr. 58). Upon arriving at Miller Avenue, Goodin parked at the home of Jimmy C. Miller<sup>2</sup> and got out of the car. (Tr. 58). Several people were standing around and Goodin asked them about purchasing drugs, and was informed that none were available, but that the “dope man” was on his way with more. (Tr. 58). After the drugs arrived, Goodin gave Chris Miller one hundred dollars (\$100) to purchase cocaine. (Tr. 58-60). Goodin further alleges that Johnny Miller handed

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<sup>1</sup> Christopher Miller was sentenced to ten (10) years in prison and a five thousand dollar (\$5,000) fine. (Tr. 147; C.P. 129).

<sup>2</sup> Jimmy Miller is a neighbor of Johnny Miller.

him the drugs after the transaction was complete. (Tr. 59, 84). After he completed his purchase, Goodin then met up with the MBN agents, gave them the drugs, was un-wired, and searched. (Tr. 59).

Both Christopher Miller and Johnny Miller were indicted for selling cocaine to Goodin. (C.P. 4-5; R.E.32-33). The matter proceeded to jury trial on October 31, 2007 and both men were convicted. Johnny Miller was found to be a habitual offender and was sentenced to thirty (30) years to serve in prison without parole and fined five thousand dollars (\$5,000).

### **SUMMARY OF THE ARGUMENT**

Johnny Miller is entitled to have his conviction reversed or, in the alternative, granted a new trial. The lower court erred in denying Johnny Miller's motion for directed verdict because the State failed to prove the essential elements of the crime. Specifically, the evidence, even when viewed in a light most favorable to the State, fails to support a conviction because there is no evidence that Johnny Miller accepted or received money in exchange for drugs.

The jury's verdict is against the overwhelming weight of the evidence because, as previously stated, it is clear that Johnny Miller did not receive any money in exchange for drugs. Additionally, the evidence further proves that Johnny Miller had no intention of participating in a drug deal. Miller, by admission, is a drug addict and was hoping to smoke crack cocaine with the confidential informant, Bobby Wayne Goodin and nothing more.

## ARGUMENT

### **I. THE TRIAL COURT ERRED IN DENYING JOHNNY MILLER'S MOTION FOR DIRECTED VERDICT.**

At the close of the State's presentation of evidence, counsel for Johnny Miller moved for a directed verdict asking the court to exclude all evidence and direct a verdict in favor of Johnny Miller because the State failed to prove each element of the crime. (Tr. 94). The motion was promptly denied by the trial court. (Tr. 94). A motion for directed verdict challenges the legal sufficiency of the evidence supporting a guilty verdict. *Randolph v. State*, 852 So.2d 547, 554 (Miss. 2002); *Fair v. State*, 789 So.2d 818, 820 (Miss. 2001); *McClain v. State*, 625 So.2d 774, 778 (Miss. 1993). With regard to the issue of the legal sufficiency of the evidence, the Mississippi Supreme Court has held that, "reversal can only occur when evidence of one or more of the elements of the charged offense are such that reasonable and fair-minded jurors could only find the accused not guilty." *Stewart v. State*, 909 So.2d 52, 56 (Miss. 2005); *Randolph*, 852 So.2d at 555; *Fair*, 789 So.2d at 820; *Wetz v. State*, 503 So.2d 803, 808 (Miss. 1987).

The relevant portion of the indictment the State used to charge and wrongfully convict Johnny Miller and Christopher Miller of the sale of cocaine reads as follows:

"while acting in concert with, aiding, assisting or encouraging each other, did willfully, unlawfully, feloniously and knowingly or intentionally sell, transfer, distribute, or deliver a quantity of cocaine, a Schedule II Controlled Substance, to Bobby Wayne Goodin, a human being, and did then and there receive therefore a sum of lawful United States money, in violation of MISS. CODE ANN. Section 41-29-139(a)(1)(b)(1)".

(C.P. 4; R.E. 32).

The statute requires the State to prove, beyond a reasonable doubt, that Johnny Miller and Chris Miller delivered a quantity of cocaine in exchange for money. In the instant case, the State failed in this effort. The only evidence the State presented was a grainy video of the alleged transaction and the testimony of an alleged recovering drug addict named Bobby Wayne Goodin. The video tape is of no consequence because it does not show Johnny Miller receiving any money from Goodin, nor does it show him delivering cocaine to Goodin. Essentially, the tape is useless. Therefore, the only evidence presented by the state is the testimony of Bobby Wayne Goodin. The testimony provided by Goodin does not constitute evidence sufficient enough to allow the jury to convict Johnny Miller of selling cocaine beyond a reasonable doubt. Allowing Johnny Miller's conviction to stand on this evidence would be unjust and unconscionable.

Based on the testimony provided, it is clear that Goodin is not a credible witness whose testimony, alone, is sufficient to convict Johnny Miller of this crime. The record clearly reflects that Goodin is not a credible witness as a result of his criminal background.

Goodin admits that he was convicted of embezzlement in the 90's. (Tr. 64). A charge of embezzlement questions the individual's honesty. Additionally, Goodin was being used as a confidential informant before he had completely recovered from his dependence on cocaine. He admitted that he worked as an informant in the 1990s and started abusing drugs again. (Tr. 68-69; R.E. 16-17). Although he attempted to play down the effect of cocaine on his life, it is clear from his testimony that he should not have been working as an informant.

Bobby Wayne Goodin, the State's star witness, admitted that he used drugs in the 90's, that he received probation for drug use in Florida in 2003, and that he was smoking crack in 2005. (Tr. 68-69; R.E. 16-17). He described smoking crack in 2005 as a period where he "fell off the wagon there for a little while." (Tr. 69; R.E.17). Goodin admits that he fell off the wagon in 2005 and smoked crack from March until April. (Tr. 69; R.E.17). After this brief period, according to Goodin, he suddenly decided to quit and work to get the drugs off the street. (Tr. 70; R.E. 18). In that regard, he testified as follows:

A. . . . That's, that's the deal I'm trying to tell you. I was smoking it, and I quit cold-turkey. Said I was quitting. Because if you ever smoked it, you will know what I mean. And I decided I wanted to do something about it. So that's when I contacted Agent McWhirter. When I went to buying it from them and smoking it, I quit smoking it. I didn't smoke it anymore.

Q. So you had just gone cold turkey from smoking crack cocaine from April to June.

A. Um-hum.

Q. So how many buys for the agency did you make, or any agency between April and this June event that you allege you bought this crack cocaine from Snapper Miller?

A. It would be hard from me to say, sir. That has been two and a half years ago.

Q. Well, now, you said you made a bunch of them.

A. Several of them. I can't tell you exactly how many. I'd say 20, 25. Somewhere in that neighborhood.

(Tr. 70-71; R.E. 18-19).

According to Goodin's own testimony, he received one hundred dollars (\$100) for each drug purchase he made for the MBN agents. (Tr. 64). Simple math reveals that Goodin received at least two thousand dollars (\$2,000) from the MBN agents from April until June 2005, one month after he allegedly got back on the wagon and quit smoking crack cocaine "cold turkey".

No reasonable jury could accept Bobby Wayne Goodin as a credible witness and accept his testimony as true. No reasonable and fairminded jury could find Johnny Miller guilty of selling cocaine based on the evidence the State presented and justice requires that this verdict be reversed.

In addition to the fact that the State's star witness is not credible, even if you accept Goodin's testimony as true, the State failed to prove every element of the crime with regard to Johnny Miller. Specifically, the State failed to prove that Johnny Miller received any money in exchange for drugs.

Bobby Goodin testified that he when he arrived, several individuals were present. (Tr. 58; R.E. 13). He further testified that after asking about drugs, he was informed that none were available, but that the dope man was coming. (Tr. 58; R.E.13). After the dope man arrived, Chris Miller came back to him and Goodin gave Chris the one hundred dollars (\$100). Chris then went over to the dope man and "made the deal." (Tr. 59; R.E. 14). When questioned further Goodin was asked if the dope man got out of the car. In response, Goodin testified as follows:

A. Yeah. They got out right there in the yard. Chris and them was over there doing the transaction.

Q. Chris and them. Chris and who?

A. Well, I don't know all of them that were over there.

Q. And how many, if you can remember?

A. There were several. I can't recall the number.

(Tr. 79-80; R.E. 21-22).

Not once, did Goodin mention Johnny Miller with regard to the transaction. He gave money to Chris Miller and Chris Miller and several other people went and made deals with the dope man. (Tr. 80; R.E. 22). Chris Miller was the person who benefitted from this deal, not Johnny Miller. On cross, he was asked if he could identify a man who was walking with Chris Miller, and Goodin replied, "No. I wasn't really paying him any attention, *because I was dealing with Chris*. (Tr. 78; R.E. 20). (Emphasis added). Clearly, Johnny Miller was not a party to this drug deal.

With regard to Johnny Miller, Goodin testified that he brought the drugs back after the transaction was complete. (Tr. 59, 84). Miller disputes this and says that he gave drugs to someone else who gave the drugs to Goodin. (Tr.107 ). Even if you choose to believe either man, the indictment, prepared by the State, in accordance with MISS. CODE ANN. Section 41-29-139(a)(1)(b)(1), requires the State to prove that Johnny Miller received money for his actions. Simply put, the State failed to prove this essential element and Johnny Miller's conviction should be reversed. This Court can reverse, when, with respect to at least

one of the elements of the offense, the evidence is such that a reasonable and fair-minded jury could not find the defendant guilty. *Dear v. State*, 960 So.2d. 542, 545 (Miss.App. 2006). The State has failed to prove that Johnny Miller received any money in exchange for drugs and this Court has the ability to reverse this conviction.

## **II. THE JURY'S VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.**

After the trial court sentenced Johnny Miller, his counsel filed a Motion for a New Trial Or in the Alternative JNOV, asking the trial court to grant Mr. Johnny Miller a new trial, arguing in part, that the jury's verdict was against the overwhelming weight of the evidence. (C.P. 146; R.E. 62). This Court has recently discussed the distinctions between a motion for judgement notwithstanding the verdict and a motion for new trial. Specifically, this Court stated:

"A motion for judgement notwithstanding the verdict tests the legal sufficiency of the evidence, while a motion for new trial asks that the jury's guilty verdict be vacated on grounds related to the weight of the evidence. *May v. State*, 460 So.2d 778, 780-81 (Miss. 1984). 'These motions are separate and distinct and perform different offices within our criminal procedural system, although... the distinction is frequently blurred.' *Id.* At 780. 'If the evidence is found to be legally insufficient, then discharge of the defendant is proper.' *Collier v. State*, 711 So.2d 458, 461 (Miss. 1998). By contrast, if the 'verdict is against the overwhelming weight of the evidence, then a new trial is proper.' *Id.*"

*Pearson v. State*, 937 So.2d 996, 999 (Miss.App. 2006).

When determining whether a verdict is against the overwhelming weight of the evidence, the 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 by not granting

This Court can reverse and render a jury's verdict if it is found to be against the overwhelming weight of the evidence and if allowing it to stand would sanction an unconscionable injustice. *Hammet v. State*, 918 So.2d 90, 97 (Miss.App. 2006). Even viewed in the light most favorable to the State, the evidence presented at trial only proves that, (1) Johnny Miller did not receive cash in exchange from crack cocaine from either Bobby Wayne Goodin or Christopher Miller and (2) Johnny Miller's sole intent was to smoke crack cocaine, not to sell drugs.

To allow this verdict to stand, based on the evidence presented at trial, would be unconscionable and unjust. Johnny Miller was sentenced as a habitual offender as a result of this conviction. He is almost sixty (60) years old and was sentenced to serve thirty (30) years as a habitual offender. This sentence is the equivalent of a life sentence and should not be allowed to stand on the shaky evidence presented by the State.

Based on the foregoing, Johnny Miller humbly requests that this Court reverse this conviction and/or grant him a new trial.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Teselyn Melton Funches, do hereby certify that I have this the 27 th day of March 2008, 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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