

**COPY**

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

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

APPELLANTS

V.

NO.2007-KA-02019-COA

**FILED**

STATE OF MISSISSIPPI

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APPELLEE

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**BRIEF OF THE APPELLANT**

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**MISSISSIPPI OFFICE OF INDIGENT APPEALS**

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APPELLANTS

V.

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STATE OF MISSISSIPPI

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

THIS 5<sup>th</sup> day of March, 2008.

Respectfully submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS  
For Chris Miller, Appellant

By:



Leslie S. Lee, Counsel for Appellant

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## **STATEMENT OF THE ISSUES**

ISSUE NO. 1: THE TRIAL JUDGE ERRED IN NOT GRANTING CHRIS MILLER A SEVERANCE FROM CO-DEFENDANT JOHNNY "SNAPPER" MILLER.

ISSUE NO. 2. 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 Chris Miller and Johnny L. Miller<sup>1</sup>, a/k/a Snapper. Chris Miller was sentenced to ten (10) years, to be served consecutively to a previously imposed twenty (20) sentence<sup>2</sup>, along with a fine of five thousand dollars (\$5,000.00), court costs and assessments. Tr. 147, C.P. 129-30, R.E. 19-20. Miller's driver's license was also suspended for six (6) months. C.P. 129-30, R.E. 19-20. This sentence followed a jury trial on October 31, 2007, Honorable Joseph H. Loper, Jr., Circuit Judge, presiding. Chris Miller is presently incarcerated with the Mississippi Department of Corrections.

## **FACTS**

According the trial testimony, on June 14, 2005, Mississippi Bureau of Narcotics (MBN) Agents Wes Stapp and Barry McWhirter, met with and searched both the person and the vehicle of a confidential informant by the name of Bobby Wayne Goodin. Goodin was

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<sup>1</sup>Snapper was sentenced as an habitual offender to thirty (30) years without parole. Tr. 143-44, C.P. 127-28.

<sup>2</sup> That conviction is currently on appeal in the Mississippi Supreme Court, No. 2006-KA-00798-SCT.

equipped with both audio and video surveillance equipment, and subsequently issued one hundred dollars (\$100.00) to purchase drugs. Tr. 44. Goodin was a frequent confidential informant for MBN. Tr. 45, 65.

Goodin testified that he traveled to Miller Avenue<sup>3</sup> to purchased drugs. He went to a house owned by Jimmy Miller (Jimmy). He testified both appellants, Chris Miller (Chris) and Johnny "Snapper" Miller (Snapper) were present<sup>4</sup>. Tr. 58, 73. Goodin stated he pulled up and asked for drugs. No one had any, but Goodin was assured that some drugs were on the way. Goodin was told to move his truck to the house next door. This house belonged to Snapper. Goodin waited for awhile until someone finally showed up with some drugs. He then said Chris came over to him and he gave Chris \$100.00. Tr. 58. Goodin explained he had to move his truck because "they" did not want the "dope man" to see his car when he showed up. Tr. 63-64. However, later, during cross-examination after the video had been played, Goodin testified he gave the money to Chris before moving his car. Tr. 77.

Although he was at Snapper's house, Goodin claimed he saw Chris made the deal with this guy who showed up at Jimmy's house while he was at least 100 feet away. Tr. 58-59, 60, 76. "Chris and them" were doing the transaction. Tr. 80. Goodin then testified Snapper brought the drugs over to him. Before leaving, another guy, whom Goodin could not initially

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<sup>3</sup> Agent Stapp testified Miller Avenue is located in Louisville, MS, Winston County. Tr. 52.

<sup>4</sup> At first Goodin stated he thought the third guy was a man named "Funk." Tr. 58. He apparently changed his opinion and thought "Prude" was at the house with Chris and Snapper. Tr. 74.

identify, came up to him and asked Goodin for some of the drugs. Tr. 59. He told this individual he had to meet someone and would be back. Tr. 64. At first Goodin thought the guy who approached him for a piece of the cocaine was Prude, but when prompted by trial counsel during cross-examination, he confirmed it was a guy named Lee. Tr. 73-74, 83. Goodin identified both defendants as the individuals present that day. Tr. 59-60. He identified Exhibit 2 as the drugs he purchased that day. Tr. 61. He further identified the surveillance video as an accurate representation of what occurred that day. Exhibit 1, Tr. 61. He turned over the drugs to the agents after the buy. Tr. 48.

Goodin admitted he is paid by MBN \$100 for each good buy he makes. Tr. 64-65. He also admitted to being a prior cocaine user and of being a prior convicted felon. Tr. 67-69. In fact, Goodin stated he was smoking crack about a month or two prior to this buy, but claimed he quit cold-turkey in order to help law enforcement. Tr. 69-70.

Keith McMahan with the Mississippi Crime Laboratory testified he was asked to analyze Exhibit 2. Tr. 85-86. He confirmed Exhibit 2 was 1 gram of cocaine base. Tr. 87. Gerald Hayes, a Louisville Police Investigator, testified he was asked to view a video to confirm the identity of the individuals in the video. Tr. 89-90. He identified both appellants as being in the video. Tr. 91.

After the State rested, Snapper stated he would like to exercise his right to testify in his own defense. Tr. 95-96. Snapper's testimony is little confusing, but he essentially admitted that he was a crack head as was Goodin. Tr. 98. He stated Goodin tried to give him money for the drugs, but he refused to take it because he did not sell drugs. He then said the

“dope boy” came to the house and put the cocaine in an old truck. The “dope boy” told Snapper to take the cocaine to Goodin. Tr. 100. Snapper was to be given a piece of the cocaine as payment. Tr. 100-101.

Although Snapper adamantly denied selling the drugs, he freely admitted transferring the cocaine to an individual standing next to Goodin. The man standing next to Goodin was apparently named Lee Earl. Tr. 101. Earl was the last person seen on the video trying to get a piece of cocaine from Goodin as he was leaving. Tr. 102. Earl then gave the cocaine to Goodin. Tr. 104. Snapper testified he never saw Goodin give any money to Chris or anyone else. Tr. 106-107. Snapper also added that the “dope boy” was one Dee Brown who was dead at the time of trial. Tr. 108.

### **SUMMARY OF THE ARGUMENT**

The trial judge abused his discretion in refusing to sever Chris Miller’s trial from that of his co-defendant, Johnny L. “Snapper” Miller. Chris Miller rested without taking the stand, but Snapper insisted on testifying. His testimony clearly admitted to transferring cocaine, therefore corroborating the confidential informant, and severely prejudicing Chris Miller’s right to a fair trial. The severance was necessary to promote a fair determination of Chris Miller’s guilt or innocence

The trial judge also erred in failing to grant a new trial. The verdict was against the overwhelming weight of the evidence. This is especially true if Snapper had not taken the stand and admitted to transferring the cocaine.



## ARGUMENT

### ISSUE NO. 1: THE TRIAL JUDGE ERRED IN NOT GRANTING CHRIS MILLER A SEVERANCE FROM CO-DEFENDANT JOHNNY "SNAPPER" MILLER.

Prior to trial, Chris Miller moved for a severance from his co-defendant, Johnny "Snapper" Miller. C.P. 98-99, R.E. 15-16. The trial judge subsequently denied that motion. C.P. 100, R.E. 17. This issue was again raised in Chris Miller's Motion for a New Trial. C.P. 136-37, R.E. 21-22. The trial judge denied the Motion for a New Trial. C.P. 138, R.E. 23. Under the unique facts of this case, this was reversible error.

The standard of review for the denial of a motion for severance is abuse of discretion.

¶ 34. A joint indictment of a felony does not entitle a defendant to separate trials. *Carter v. State*, 799 So.2d 40, 44 (Miss.2001). The grant or denial of a motion for severance is at the discretion of the trial judge. *Blanks v. State*, 451 So.2d 775, 777 (Miss.1984). "The decision of the lower court to grant or deny a motion for severance is reversible only where it constitutes an abuse of discretion." *Jones v. State*, 710 So.2d 870, 876 (Miss.1998). "Absent a showing of prejudice, there are no grounds to hold that the trial court abused its discretion." *Id.*; *Duckworth v. State*, 477 So.2d 935, 937 (Miss.1985)(citing *Price v. State*, 336 So.2d at 1311, 1312 (Miss.1976)).

¶ 35. This Court in *Strahan v. State*, 729 So.2d 800, 803 (Miss.1998)(quoting *Hawkins v. State*, 538 So.2d 1204, 1207 (Miss.1989)), set forth the following considerations for review:

The trial judge has the discretion to grant a severance if it is necessary to promote a fair determination of the defendant's guilt or innocence. In *Duckworth v. State*, 477 So.2d 935, 937 (Miss.1985), this Court stated that there are a number of criteria to be used to determine if the denial of a motion for severance is proper. These criteria are whether or not the testimony of one co-defendant tends to exculpate that defendant at the expense of the other defendant and whether the balance of the evidence introduced at trial tends to go more to the guilt of one defendant

rather than the other. Absent a showing of prejudice, there are no grounds to hold that the trial court abused its discretion. *Id.* at 937.

*Caston v. State*, 823 So.2d 473 (¶34-35) (Miss. 2002).

The appellant would contend that he was certainly prejudiced by being tried along with Snapper. Snapper took the stand and testified that he transferred cocaine in the hope of getting a piece for himself. Tr. 100-101. This testimony corroborated, at least in part, the testimony of Goodin, the confidential informant. Goodin testified Snapper brought him the cocaine. Tr. 59. Chris Miller was clearly prejudiced by this testimony. The video did not show Goodin giving Chris Miller any money. The video did not show Snapper giving the drugs to Goodin. Snapper's testimony not only sealed his own fate, but sealed Chris's fate as well.

Snapper was apparently unaware that he was essentially confessing to the charge. "I ain't saying I didn't handle none. But I'm on trial for selling it. I am not on trial for handling it." Tr. 107. There was undoubtedly a conflict of interest for Snapper to take the stand and admit to his part in this buy while Chris Miller exercised his right to remain silent. Chris Miller was prejudiced when the trial judge refused to sever his trial from Snapper. He is therefore entitled to a new trial.

**ISSUE NO. 2. THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.**

In Chris Miller'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. 136-37, R.E. 21-22. The trial judge denied this motion. C.P. 138, R.E. 23. 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 confidential informant’s testimony was the only evidence that money was exchanged. The video did not show any money being transferred to Chris Miller, and certainly did not show Chris delivering any cocaine to anyone. Exhibit 1. In fact, Goodin testified to two different accounts as to when the money was exchanged. Goodin initially testified that Chris came over to him while he was at Snapper’s house, and he gave Chris \$100.00. Tr. 58. However, he subsequently testified that he gave the money to Chris before moving his car to Snapper’s house. Tr. 77. Since the exchange is not on the video, the informant’s trustworthiness was absolutely essential to the case. As the record reflects, Goodin’s testimony was contradictory and unreliable.

Even Snapper’s testimony was more credible than Goodin’s. Snapper had no hesitation in admitting he was a crack user and that he did at least handle the cocaine. Tr.

98, 104. He also explained that the Goodin was also a user and frequently came to his house to smoke cocaine. Tr. 98, 111.

Clearly, it would sanction an unconscionable injustice to allow the Appellant to be convicted on the word of this informant. No reasonable jury could put any faith into his testimony. There were too many individuals out in Jimmy's yard that day. Exhibit 1. Goodin could have paid any one of them, especially when he could not even remember when Chris allegedly took the money from him.

As set forth in the indictment, the State was required to show that Chris Miller, acting in concert and aiding and abetting Snapper Miller, did (1) unlawfully transfer or deliver or sell cocaine to the confidential informant, Goodin, and (2) received a sum of money. C.P. 4, R.E. 13. Once more, besides the testimony of Goodin, the State presented no evidence that Chris Miller received any money for the cocaine. By alleging in the indictment that Miller received a sum of money for the cocaine, the State took on the burden of proving that Miller received money. *Gray v. State*, 728 So.2d 36 (¶176-77) (Miss. 1998). The jury was also instructed that it must find Miller received money beyond a reasonable doubt. C.P. 110.


Clearly, given the evidence presented, Chris Miller should be entitled to a new trial. To allow this verdict to stand would sanction an unconscionable injustice. *See Hawthorne v. State* 883 So.2d 86 (¶13) (Miss. 2004).

## CONCLUSION

Given the facts presented in the trial below, the verdict was contrary to the overwhelming weight of the evidence. Miller deserved to be tried independently of Snapper Miller. Chris 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 Chris Miller, Appellant

By:

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

**CERTIFICATE**


I, Leslie S. Lee, do hereby certify that I have this the 5<sup>th</sup> 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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