


**I. CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record for the Appellant hereby certifies that the following persons have an interest in the outcome of this case. This representation is made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. Eddie L. Henderson, Batesville, Ms.
2. Linda Jefferson, Batesville, Ms.
3. David L. Walker, Batesville, Ms.
4. James S. Hale, Jr. Batesville, Ms.

Respectfully submitted,

This the 7<sup>th</sup> day of July 2008.

  
David L. Walker MBN  
Counsel for Appellant

## II. TABLE OF CONTENTS

I.	Certificate of interested persons.....	i
II.	Table of contents.....	ii
III.	Table of authorities.....	iii
IV.	Statement of issue.....	1
V.	Statement of case.....	5
VI.	Summary of argument.....	6
VII.	Argument.....	7-10
VIII.	Conclusion.....	10
IX.	Certificate of service.....	10

### III. TABLE OF AUTHORITIES

1. Bogart v. State, 624 So. 2d 1313, 1319 (Miss. 1993).....	p.7
2.Burton v. State, 875 So. 2d 1120 (Miss. Ct. App. 2004).....	p.8
3.Byrom v. State, 863 So. 2d 836, 851 (Miss. 2003).....	p.6
4 Fears v. State, 779 So. 2d 1125, 1127 (Miss. 2004).....	p.6
5. Gatlin v. State, 724 So. 2d 359, 369 (Miss. 2003).....	p.6
6. Miranda v. Arizona, 384 U.S. 436, 444 (U.S. 1966).....	p.7
7. Sacus v. State, 2005-KA-01515-COA, affirmed 3-27-07.....	p.8
8. Parks v. State, 930 So. 2d 383, 386 (Miss. 2006).....	p.8
9. Fifth Amendment, U.S. Constitution.....	p.6
10. Article III, Section 26, Mississippi Constitution (1890).....	p. 7

## **V.STATEMENT OF ISSUE**

Whether the trial court erred in permitting the assistant district attorney to cross examine the Appellant as to why he did not come and tell the police his reason for being at the apartment of the alleged victim and give the police a statement in violation of the 5<sup>th</sup> Amendment of the United States Constitution and Article III, Section 26 of the Mississippi (1890) and **Miranda v Arizona**.

## **V. STATEMENT OF CASE**

### **A. PROCEDURAL HISTORY.**

Eddie Lamont Henderson was indicted by the grand jury of Panola County, Ms. Second Judicial District on August 22, 2007 for the burglary of the dwelling of Linda Jefferson with the intent to commit larceny in violation of section 97-17-23 MCA. Clerk's record at 5. A waiver of arraignment was filed with the circuit clerk on October 17th, 2007. Id. at 2. He proceeded to trial before the petit jury on March 17<sup>th</sup>, 2008. The petit jury returned a verdict of guilty of the aforesaid charge. R. at 72. A poll of the petit jury pursuant to URCCCP 3. 10 indicated that the verdict was unanimous. R. at 73. The Appellant's motion for a new trial and in the alternative for a JNOV was filed and denied by the trial court. Clerk's record at 21-23. The trial court sentenced the Appellant to a term of five years in the Mississippi Department of Corrections to be followed by five years of post-release supervision. Id. at 24-27. The Appellant then filed a notice of appeal with the circuit clerk. Id. at 28.

### **B. APPELLEE'S TRIAL WITNESSES**

#### **LINDA JEFFERSON**

Linda Faye Jefferson testified that on January 1, 2007 that she lived at 107 Martin Luther King, Panola Apartments, Batesville, Ms. R. at 12. During the early morning of that day she heard a knock and kicking at her door. Id. She cracked the door of her apartment and a person entered her apartment, grabbed her wrist and told her "We ain't going nowhere." Id. She recognized the face of this person, but did not know his name. Id. She struggled with him for a while, got away and ran next door and called the police. Id. This person pushed his way into her apartment. R. at 13.

When the police officer arrived, she went with him to her apartment and this person was still in her apartment. R. at 15. He ran from the police officer, but was caught and placed in handcuffs. R. at 16. Ms. Jefferson knew of the Appellant from the neighborhood. Id. She denied that she had ever been friends with him. R. at 17. Nor had she socialized nor had any kind of relationship with him. Id. He had never been in her apartment prior to that day. Nor did he have her permission to enter her apartment that day. Id. She identified two photographs of the door of her apartment with mud on it taken on the day in question. R. at 17-18.

On cross examination Ms. Jefferson testified that she was single. R. at 19. She could not testify as to whether there was anything unusual about the Appellant that day. R. at 20. He had never came to her apartment to dry off because he was wet. R. at 21. Jamie Johnson is one of her next door neighbors. R. at 22.

On redirect examination Ms. Jefferson denied that Mr. Johnson had ever introduced her to the Appellant. R. at 24.

#### **ISSAC MILTON**

Issac Milton testified that he is the next door neighbor to Ms. Jefferson. R. at 25. She came to his apartment early on January 1, 2007 and advised him that someone was trying to break in on her. R. at 26. She appeared to be afraid. Id. He let her use his telephone to call the police. Id. He later gave a statement to the police officer about the information that he had on this matter. R. at 27. He knew the Appellant and had never seen him to associate with Ms. Jefferson. R. at 29.

On cross examination, Mr. Milton testified that his apartment had a peephole and that the apartments in his complex were designed about the same. R. at 30. He did

not hear any disturbance that morning. Id. Ms. Jefferson did not tell that anyone tried to rape her or assault her. R. at 31.

### **NICK HUGHES**

Nick Hughes testified that on January 1, 2007 he was a patrolman for the City of Batesville, Ms. police department. He responded to a call at Ms. Jefferson's apartment. R. at 32. She ran to his patrol car and told him that "He's in my house." R. at 33. Officer Hughes went to the apartment and saw the Appellant putting a candle from in the apartment in his coat pocket. R. at 35. He asked the Appellant what he was doing and he just stood there and did not say anything. Id. Officer Hughes told the Appellant to put the candle down and he did so. The Appellant later took off running. He chased the Appellant, apprehended him and placed him in the squad car. R. at 36. He placed the Appellant in custody. Id. The Appellant appeared to be highly intoxicated. Id. He took a photograph of Ms. Jefferson's door with a muddy footprint on it. R. at 37. The Appellant hardly said anything to him. R. at 41.

On cross examination Officer Hughes testified that he could not remember whether Ms. Jefferson's apartment had a peephole. R. at 41. The Appellant was placed under arrest after was chased down. R. at 42.

After redirect examination of Officer Hughes the Appellee preliminarily rested its case. The Appellant's motion for a directed verdict was denied. R. at 46.

### **C. APPELLANT'S TRIAL WITNESSES**

#### **EDDIE HENDERSON**

The Appellant testified that he met Ms. Jefferson about two and a half years prior to the trial. R. at 49. He met her at Panola Apartments. Jamie Johnson introduced

Ms. Jefferson to the Appellant. R. at 50. He had socialized with her and went to her apartment one day when he was soaking wet so that he dry off. Id. He talked to her on a porch one day. Id. He had sexual relations with her. Id.

According to Mr. Henderson on the day in question he went to knock on Mr. Johnson's door, but he was asleep. Therefore, he went to Ms. Jefferson's apartment. She came to the door, opened it, and stood there and talked to him. R. at 50-51. She suddenly walked off and the police were then at the door. R. at 51. He was taken to jail. Id. He did not force his way into Ms. Jefferson's apartment. She opened the door. Id.

On cross examination Mr. Henderson testified that his sexual relationship with Ms. Jefferson was "a one night stand." R. at 52. He was not drunk on January 1, 2007. Id. Ms. Jefferson walked calmly next door. R. at 54. He had been to her apartment three or four times. R. at 56. She knew his face because he lived two houses down from her sister and she came to visit her sister. Id. He denied that he ran from the police officer. R. at 59. He did not do anything and thus did not have a reason to run. R. at 60.

### **WILLIE JAMES JOHNSON**

Willie James Johnson testified that on January 1, 2007 that he lived at the Panola Apartments in Batesville, Ms. R. at 60-61. He knew both Ms. Jefferson and the Appellant. R. at 62. He introduced Ms. Jefferson to Mr. Henderson. Id. The Appellant went over to her house. Id. On the day in question a man named Fats dropped the Appellant off at the apartment complex. R. at 63. Mr. Johnson refused to take him home because he wanted to sleep. R. at 65. The Appellant was drinking. R. at 67.



## **VI. SUMMARY OF ARGUMENT**

The trial court erred in overruling the Appellant's objection and motion for a mistrial related to the assistant district attorney's question to the Appellant on cross examination as to why he did not come tell the police his reason for being at the apartment of Ms. Jefferson and give the police a statement.

The Appellant was not required to provide the police with a statement of his version of events that occurred on the day in question and the assistant district attorney should not have been permitted by the trial court to inquire into this fact before the petit jury.

## VII. ARGUMENT

During the cross examination of the Appellant the assistant district attorney asked him if he had this perfectly good reason why he was at the apartment of Ms. Jefferson, and he knew he had been charged and was going to trial, then why did not he just come and tell the police and clear everything up on the front end. R. at 57. The Appellant objected and moved for a mistrial. He argued to the trial court that the Appellant did not have to explain why he did not give the police a statement. Id. The assistant district attorney responded that the Appellant did have a right to remain silent, but gave up that right here today. R. at 58. The trial court responded that it would overrule the objection in the context that this has come down. It was of the opinion that this question was a legitimate question. Id. The trial court permitted the trial to continue thus overruling the motion for a mistrial as well. Id.

Procedurally, the Appellant preserved this issue for review by lodging a contemporaneous objection to this evidence and obtaining a ruling from the trial court on the objection and motion. Gatlin v. State, 724 So. 2d 359, 369 (Miss. 1998) and Byrom v. State, 863 So. 2d 836, 851 (Miss. 2003) and MRE 103 (A)(1).

The Appellant included this issue in his motion for a new trial and in the alternative for a judgment notwithstanding the verdict. Clerk's record at 21-22. Thus, the next procedural hurdle was met in preserving this issue for review. Fears v. State, 779 So. 2d 1125, 1127 (Miss. 2004). At the hearing on the motion for a new trial and in the alternative for a judgment notwithstanding the verdict, the Appellant argued that the Fifth Amendment of the United States Constitution and Article 3

Section 26 of the Mississippi Constitution of 1890 and Miranda v. Arizona, 384 U.S. 436, 444 (U.S. 1966). A criminal defendant has a right to remain silent when confronted by a law enforcement officer. Miranda, supra. The Appellant was clearly placed under arrest outside of the apartment complex by Officer Hughes. R. at 36. The Appellant cited the trial court to Leonard v. State which held that the police officer improperly testified that the defendant gave no statement. Mr. Leonard argued that the sole purpose of this action was to attack his credibility by informing the petit jury that he made no statements of self-defense when arrested. However, the court went on to hold that this error was harmless because Mr. Leonard chose to voluntarily testify and thus the State was entitled to test his credibility. The State could do so by questioning whether his prior words and actions were consistent with the testimony which he was then offering in court. See also, Bogart v. State, 624 So. 2d 1313, 1319 (Miss. 1993). Unlike, the facts in Leonard, Mr. Henderson version of events to the petit juror went beyond his statement to Officer Hughes that who testified that he was not saying a whole lot. R. at 36. When the officer asked the Appellant what he was doing in the apartment, he never said a word to the officer. R. at 35.

The assistant district attorney responded to the Appellant's argument by indicating that the Appellee's position was that when the Appellant took the witness stand to testify in his own behalf that he "opened the door" to be questioned on this subject matter and why he did not explain his version of events on the front end. R. at 85-86. The assistant district attorney went on to tell the trial court that the basis for his inquiry was that the Appellant told Officer Hughes that he did not do anything

wrong on the scene. He wanted to know why he was going into custody. And if he had a perfectly reasonable explanation for it, the assistant district attorney thought that he could have told the officer at that time. R. at 88.

The right to remain silent includes the right not to offer an explanation of events. The Appellant did not give a written nor tape-recorded statement to Officer Hughes. A criminal defendant may suffer prejudice by the state eliciting testimony of his refusal to write or record a statement which can be construed to cast doubt on his truthfulness. Sacus v. State, 2005-KA-01515-COA affirmed on March 27, 2007 and Griffin v. State, 557 So. 2d 542 (Miss. 1990).

The Appellant argued to the trial court and argues now that this case centered on a credibility question in that the Appellant and Ms. Jefferson had diametrically opposed versions of what happened. Thus, the importance of the information solicited by the assistant district attorney became crucial because of its effect on evaluating the credibility of the Appellant.

The admission of evidence lies within the discretion of the trial court and the trial court may only be reversed if this discretion is abused. Burton v. State 875 So. 2d 1120 (Miss. Ct. App. 2004). The trial court was clearly wrong in admitting this testimony. The Appellant clearly suffered prejudice in the admission of the testimony by having his credibility undermined by this testimony.

The trial court also abused its discretion in denying the Appellant's motion for a mistrial. The trial court must declare a mistrial when there is an error in the proceedings resulting in substantial and irreparable prejudice to the Appellant's case. Parks v. State 930 So. 2d 383, 386 (Miss. 2006). The admission of the aforesaid

testimony elicited from the Appellant over his trial counsel's objection resulted in substantial and irreparable prejudice to the Appellant and should have been granted.

### VIII. CONCLUSION

In conclusion, the Appellant urges the Court to hold that the trial court erred in permitting the Appellee to solicit the aforesaid testimony from the Appellant on cross examination and in denying the Appellant's motion for a mistrial.

Respectfully submitted,

This the 7<sup>th</sup> day of July 2008.



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### Certificate of Service

I, David L. Walker, counsel for the Appellant, hereby certify that I have this day  
Either mailed or hand-delivered a copy of the Appellant's brief to Hon. Jim Hood,  
attorney general, Hon. Andrew C. Baker, circuit court judge, and Hon. James S.  
Hale, Jr. assistant district attorney, at their usual business addresses.

This the 7<sup>th</sup> day of July 2008.



David L. Walker