

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

FREDERICK MILLER, JR.

APPELLANT

VS.

NO. 2008-KA-0810-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Attala County, Mississippi, and a judgment of conviction on one count of accessory after the fact to murder against Frederick Miller. Following a jury trial on March 17, 2008, the honorable Joseph H. Loper, Circuit Judge presiding, sentenced Miller to five years in the custody of the Mississippi Department of Corrections.

FACTS

At trial, Jeremy Stewart testified that in the early morning hours of November 1, 2006, Jerry Montez Winters (Winters), told him that he had been in a wreck. (T. 59). Winters, Josh Cox (Cox), Akeem Miller (Akeem), and Stewart went to the scene to find a dropped cell phone and left. (T 59). According to Stewart, they went to Winter's girlfriend's house and then Miller arrived. (T. 60). Winters, Miller and Stewart went back to the scene, Miller and Winters got out of the car to look for the gun, looked around, and got back in the vehicle. (T. 61). Stewart testified that Winters and Miller had "chicken plant" gloves. (T. 60, 63).

On cross examination Stewart admitted he did not mention the two men wearing gloves prior to meeting with the district attorney's office. Stewart admitted that he did not really know what they were going to look for at the scene the second time, ultimately concluding "I think it was the gun." (T. 62). Per Winters' request, Stewart drove Winters' to the bus station in Jackson a few days after the incident. (T. 66). Stewart admitted to facing criminal charges as the result of his actions. (T. 67).

Kay Robertson, the coroner for Attala County, testified that when she arrived to the scene on Highway 19, she saw a Chevrolet Sports Utility Vehicle (SUV) crashed into the woods. (T. 69). Robertson testified she determined that the man inside the vehicle died as a result of a gunshot wound to the right side of the head. (T. 70).

Akeem, Miller's brother, testified that on the night of October 31, 2006, he overheard Winters tell Miller that someone had been shorting him some money, and that Winters was going to take care of him. (T. 74) Winters showed Akeem his pistol. He gave Akeem his cell phone to hold and told him that when he called the phone for Akeem to answer it but not to say anything. Akeem testified Winters told him "he fixing to go take care of the person who shorted him on his money," and then left with Josh Cox and Miller. (T. 76). Winters called him on the cell phone and pretended like Akeem was his girlfriend; Akeem then heard a gunshot and the phone went dead.(T. 76-77).

Akeem testified that 20 to 30 minutes later Winters came back breathing hard and asked for water; then Appellant and Cox came in. (T. 77). Winters showed Akeem a large amount of marijuana stuffed down the front of his pants. Winters asked Stewart to take him to his girlfriends house. (Id.) Winters, Cox, Akeem and Stewart were riding in the car and Winters tricked Stewart into driving to the crash site. The group got out of the car, found the cellular telephone, got back in the car and then went to Winters' girlfriend's house. (T. 78-80).

Akeem further testified that after Miller arrived at the girlfriend's house, Winters, Stewart, Cox and Miller went back to the scene, he believed to search for the gun. (T. 79-80). Akeem did not go. When they returned Winters started burning the victim's wallet and credit cards, but Fred did not participate in the burning. (T. 80-84). Akeem further testified no one told Miller that they were going to go and look at a dead body. (T.84).

Martin Roby, an investigator with the Attala County Sheriff's Department, testified to his investigation of the crime scene and photographs of the scene. (T. 92; Ex. S- 9 through 14) Roby testified that the murder weapon and a one dollar bill were found on the ground outside the vehicle. (T. 91-93). Roby testified they initially thought the victim had been robbed because he had no wallet, his pockets had been pulled out and the vehicle glove box had been gone through. (T. 88-90). Winters' jacket and shirt were found approximately a mile from crime scene. (T. 94). Roby testified through their investigation they determined a telephone call was placed at 12:30 a.m. from Miller's telephone to the victim. (T. 95-96). Roby testified on November 7, 2006, Miller was picked up by authorities for questioning. After being read his constitutional rights and signing a waiver, Miller was interviewed. (T. 97; Ex. S-15 through 17).

Roby testified at length to Miller's statements during the interview. Miller said Winters told him "He was, man, I'm fixing to kill something." (T 152; Ex. S-17, at page 21). Miller also told authorities he overheard Winters on the phone talking about drug activity. Winters told him they went back to the crime

scene “To look for something that he had dropped.” (T. 152; Ex. S-17, at page 15). Also Miller claimed when Winters came to him after the shooting Winters was visibly shaken and “looked like he had seen a ghost.” Miller told authorities “I knew he done it.” Miller said “He had that glow in his eyes. I already knew he had done it” in referring to seeing Winters. (T.122). Roby also testified to finding the burned remains of the victim’s wallet at Winters’ girlfriend’s house.

Miller took the stand and testified in his own defense. Miller testified that after he got off work he went home and Winters was in his yard. (T. 135). Winters asked Miller if he could borrow Miller’s cell phone and Miller agreed. (T. 135). Miller then went and checked on his sister and let Winters use his bike. (Id.). Miller testified Winters never told him what he was doing. (T. 136). Miller testified when Winters returned he looked as if he had seen a ghost, and Winters told him that he had dropped the cell phone. (T. 137). Miller testified he went inside and when he came back out Winter and his brother Akeem were gone. (T. 138). Miller then went to Winters’ girlfriend’s house to find his brother and he did. (T. 139). According to his testimony, no one told him anything concerning where they had been. Winters asked Miller if he wanted a ride. (Id.). He testified he got in the car and they rode up Highway 19. (T. 140). He didn’t have any gloves when he went to the scene and no one asked him to look for the gun. (T. 141). Winters pulled off to the side of the road and when they got out of the vehicle, Miller testified he saw an SUV in the bushes. (Id.) Miller testified he was shocked and frightened when he saw the body in the vehicle so he returned to Stewart’s vehicle. (T. 140).

The jury convicted Miller of accessory after the fact of murder. The court sentenced Miller to five years in the custody of the Mississippi Department of Corrections. After the denial of post trial motions, Miller appealed raising the following issues.

- I. WHETHER JURISDICTION IN CIRCUIT COURT WAS PROPER WHEN THE MISSISSIPPI YOUTH COURT ACT CLEARLY PROVIDED THAT YOUTH COURT WAS THE APPROPRIATE JURISDICTION FOR CRIMES WITH WHICH THE APPELLANT WAS CHARGED?**
- II. WHETHER THE TRIAL COURT ERRED WHEN IT FAILED TO GRANT THE APPELLANT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT BECAUSE THE STATE FAILED TO MEET ITS BURDEN OF PROOF AND ESTABLISH THE ESSENTIAL ELEMENTS OF THE CRIME OF ACCESSORY AFTER THE FACT BY LEGALLY COMPETENT EVIDENCE?**
- III. WHETHER THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE?**
- IV. WHETHER THE TRIAL COURT ERRED IN FAILING TO INSTRUCT THE JURY AS TO THE ELEMENTS OF MURDER?**
- V. WHETHER THE INDICTMENT WAS FATALY DEFECTIVE IN FAILING TO INSTRUCT THE JURY AS TO THE ELEMENTS OF MURDER?**
- VI. WHETHER THE APPELLANT'S STATEMENTS TO POLICE OFFICERS WERE ADMISSIBLE UNDER THE MISSISSIPPI YOUTH COURT ACT, THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION, AND ARTICLE 3, SECTION 26, OF THE MISSISSIPPI CONSTITUTION?**
- VII. WHETHER THE APPELLANT WAS DENIED HIS FUNDAMENTAL CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL?**
- VIII. WHETHER THERE WAS CUMULATIVE ERROR THAT DEPRIVED APPELLANT OF HIS RIGHT TO A FUNDAMENTALLY FAIR AND IMPARTIAL TRIAL?**

SUMMARY OF ARGUMENT

The circuit court has jurisdiction over juveniles who commit felonies on or after their seventeenth birthday pursuant to Mississippi Code Annotated section 43-21-151(2). Therefore, the Circuit Court of Attala County properly exercised jurisdiction over Frederick Miller in the prosecution for accessory after the fact of murder. The jury's guilty verdict was supported by legally sufficient evidence. The weight and credibility of the evidence supported the jury's verdict. The indictment was proper having put Miller on notice of the crime for which he was charged.

When questioned by police, Miller was seventeen years old and the suspect of a felony so it was not necessary for a parent to be present during questioning. Miller's statement was properly admitted in evidence. The court properly instructed the jury. Miller's trial counsel provided effective assistance of counsel. There was no cumulative error.

ARGUMENT

I. THE COURT PROPERLY EXERCISED JURISDICTION.

The circuit court has jurisdiction over juveniles who commit felonies on or after their seventeenth birthday. *Ward v. State* 914 So.2d 332, 353 (Miss.App.,2005) In his first assignment of error, Miller claims he “was seventeen years old, and therefore, was a “child” for the purposes of the Mississippi Youth’s Court statute” and not subject to the jurisdiction of the circuit court.

Miller was charged with accessory after the fact of murder, which is a felony. Miller was seventeen (17) years old at the time of the crime. (T.135). Mississippi Code Annotated section 43-21-151 provides:

(1) The youth court shall have exclusive original jurisdiction in all proceedings concerning a delinquent child, a child in need of supervision, a neglected child, an abused child or a dependent child except in the following circumstances:

(a) Any act attempted or committed by a child, which if committed by an adult would be punishable under state or federal law by life imprisonment or death, will be in the original jurisdiction of the circuit court;

(b) Any act attempted or committed by a child with the use of a deadly weapon, the carrying of which concealed is prohibited by Section 97-37-1, or a shotgun or a rifle, which would be a felony if committed by an adult, will be in the original jurisdiction of the circuit court; and

(c) When a charge of abuse of a child first arises in the course of a custody action between the parents of the child already pending in the chancery court and no notice of such abuse was provided prior to such chancery proceedings, the chancery court may proceed with the investigation, hearing and determination of such abuse charge as a part of its hearing and determination of the custody issue as between the parents, notwithstanding the other provisions of the Youth Court Law. The proceedings in chancery court on the abuse charge shall be confidential in the same manner as provided in youth court proceedings.

When a child is expelled from the public schools, the youth court shall be notified of the act of expulsion and the act or acts constituting the basis for expulsion.

(2) Jurisdiction of the child in the cause shall attach at the time of the offense and shall continue thereafter for that offense until the child's twentieth birthday, unless sooner terminated by order of the youth court. **The youth court shall not have jurisdiction over offenses committed by a child on or after his eighteenth birthday, or over offenses committed by a child on or after his seventeenth birthday where such offenses would be a felony if committed by an adult.** (Emphasis added by Appellee.)

Therefore, the Circuit Court of Attala County had proper jurisdiction to decide the charge against Miller. Based on this Court’s decision in *Ward*, this assignment of error has no merit.

II. THE JURY'S VERDICT IS SUPPORTED BY LEGALLY SUFFICIENT EVIDENCE.

In reviewing issues of legal sufficiency, the reviewing court does not “ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt.” *Bush v. State*, 895 So2d 836, 843 (¶16)(Miss.2005)(quoting *Jackson v. Virginia*, 443 U.S. 307, 315 (1979)). Rather, the Court will view the evidence in the light most favorable to the State and determine whether any rational juror could have found that the State proved each element of the crime charged beyond a reasonable doubt. *Id.* The prosecution receives the benefit of all “favorable inferences that may be reasonably drawn from the evidence” when determining if the evidence presented was sufficient to support the verdict. *Smith v. State*, 839 So. 2d 489, 495 (¶12) (Miss. 2003).

Miller argues that there was insufficient evidence regarding the charge of accessory after the fact. The elements of accessory after the fact are: (1) a felony has been committed; (2) the defendant “concealed, received, or relieved any felon, or having aided or assisted any felon, knowing that such person had committed a felony”; and (3) the defendant intended “to enable such felon to escape or to avoid arrest, trial, conviction or punishment, after the commission of such felony.” Miss. Code Ann. § 97-1-5 (Rev.2006). *Brown v. State*, --- So.2d ----, 2008 WL 5220647, (Miss.App.,2008).

Akeem, Appellant’s brother, testified he overheard Winters tell Miller that someone had been shorting him some money, and that Winters was going to take care of him. Winters showed Akeem his pistol; gave him a phone to hold, told Akeem “he fixing to go take care of the person who shorted him on his money,” and then left with Josh Cox and Miller. Winters returned 20 to 30 minutes later breathing hard and acting like he had seen a ghost. Miller and Cox returned also.

In his interview with authorities, Miller said Jerry Winters told him “He was, man, I’m fixing to kill something.” Miller told authorities he overhead Winters on the phone talking about drug activity. Winters told him they went back to the crime scene “To look for something that he had dropped.” Also Miller

claimed when Winters came to him after the shooting Winters was visibly shaken and “looked like he had seen a ghost.” Miller told authorities “I knew he done it.” The Mississippi Supreme Court previously held to render one liable as an accessory after the fact he must have had actual knowledge, at the time he relieved or assisted that principal, that the latter had committed a felony, or was an accessory before the fact to a felony; and such knowledge must be personal as distinguished from constructive. Thus, it has been held that if accused had actual knowledge of facts which would give him good reason to believe the person assisted to be guilty of the felony, this will be sufficient. (220 So.2d at 834). *Harris v. State*, 290 So.2d 924, 926 (Miss. 1974) quoting *Matula v. State*, 220 So.2d 833 (Miss.1969).

Miller knew a murder had been committed, as evidenced in his statement to police and his brother’s testimony at trial. Miller knew Winters shot Jackson before they left the girlfriend’s house and went to the crime scene to look for Winters’ gun and other evidence. Miller directly aided Winters in the sense that he tried to locate the murder weapon and other incriminating evidence at the scene in order to avoid arrest, detection, trial, conviction or punishment after commission of the felony in searching for the murder weapon. The evidence was more than sufficient to prove each element of accessory after the fact. The prosecution receives the benefit of all favorable inferences that may be reasonably drawn from the evidence when determining if the evidence presented was sufficient to support the verdict.

Hoye v. State, --- So.2d ----, 2009 WL 175530(Miss.App.,2009).

The crime of accessory after the fact requires that Miller acted with the intent to help a felon escape detection. There was sufficient evidence produced at trial that Miller assisted Jerry Winters in searching for the murder weapon and other incriminating evidence in order to escape or avoid arrest, trial, conviction, or punishment for the murder of Chadwick Jackson. Considering the evidence in the light most favorable to the State, a rational juror could have found that the State proved each element of accessory after the fact. This issue is without merit.

III. THE WEIGHT OF THE EVIDENCE SUPPORTS THE JURY'S VERDICT.

In making the determination of whether a verdict is against the overwhelming weight of the evidence, this Court must view all evidence in the light most consistent with the jury verdict, and we should not overturn the verdict unless we find that the lower court abused its discretion when it denied the motion.” *Woodard v. State*, 765 So. 2d 573, 576 (¶16) (Miss. Ct. App. 2000) (citing *Veal v. State*, 585 So. 2d 693, 695 (Miss. 1991)). “[W]e will only disturb a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice.” *Bush v. State*, 895 So. 2d 836, 844 (¶18) (Miss. 2005) (citing *Herring v. State*, 691 So. 2d 948, 957 (Miss. 1997)). Therefore, in order for this Court to reverse on the grounds that the verdict was against the overwhelming weight of the evidence, we would have to “disagree[] with the jury’s resolution of the conflicting testimony.” *Id.*

Accepting as true the evidence favorable to the State requires acceptance of Miller’s statement to authorities and the testimony of Akeem that Miller knew before Winters ever left with the gun that he was going to take care of the person who was shorting him drug money; that when Miller showed up like he had seen a ghost and with a stash of marijuana he had killed someone. Accepting as true Stewart’s testimony that Miller went to the scene with Winter wearing “chicken plant” gloves and the evidence at the crime scene that showed someone had rummaged through the victim’s pockets and vehicle looking for something further implicates Miller. In accepting as true the statements that Miller went to the crime scene with Winters to find the gun he dropped, the State submits it is a most reasonable inference that Miller assisted Winters in order to avoid prosecution for murder.

Therefore, viewing the evidence in the light most favorable to the verdict, there is no abuse of discretion in the trial court’s denial of the motion for new trial as the evidence supported the verdict.

IV. THE TRIAL COURT PROPERLY INSTRUCTED THE JURY.

“In determining whether error lies in the granting or refusal of various instructions, the instructions actually given must be read as a whole. When so read, if the instructions fairly announce the law of the case and create no injustice, no reversible error will be found.” *Coleman v. State*, 697 So.2d 777, 782 (Miss.1997) (quoting *Collins v. State*, 691 So.2d 918 (Miss.1997)). In order to preserve a jury instruction issue on appeal, a party must make a specific objection to the proposed instruction in order to allow the lower court to consider the issue. *Watson v. State*, 483 So.2d 1326, 1329 (Miss.1986).

Miller argues that the trial court failed to properly instruct the jury as to the elements of murder and cites *Wilson v. State*, 592 So.2d 993 (Miss. 1991) in support thereof. *Wilson* held “For a jury to convict as an accessory before the fact there must be evidence that the defendant “procures, counsels, or commands another to commit a felony for him, but is not himself present, actually or constructively, when the felony is committed.” *Sayles v. State*, 552 So.2d 1383, 1389 (Miss.1989). The jury is not permitted to simply assume that the felony was in fact committed. The jury must find beyond a reasonable doubt that the crime was committed and that the defendant counseled or commanded another to commit the crime. *Ray v. State*, 330 So.2d 580, 587 (Miss.1976).

In the case *sub judice* the State presented evidence of the murder of Chadwick Jackson, that Miller knew that murder was committed and then proceeded to assist Winters. The jury was not asked to assume a murder was convicted.

Wilson can also be distinguished in that the defendant objected to the jury instructions at trial. Miller entered his own elements instruction in D-1 but withdrew it to join in the State’s elements instruction in S-1 (T. 159-60; C.P. 34, 45). Miller’s failure to object to the jury instructions submitted at trial barred him from challenging the jury instruction on appeal. *Johnson v. State*, 757 So.2d 345 (Miss.App.,2000)

In *Turner v. State*, 573 So.2d at 1343 (Miss.1990), the Mississippi Supreme Court held “... to pass

the minimal threshold of advice to the jury that, before it could find [the defendant] guilty as an accessory before the fact, it also had to find the fact.” The *Turner* instruction was primarily accepted because of two words “that occurred” which the court accepted as meeting the “minimum threshold of advice to the jury.” In the case *sub judice*, Jury Instruction 3 states “... knowing the said Jerry Montez Winters, had committed a felony, to wit: Murder...”. Jury Instruction 3 provides a minimum threshold of advice to the jury. Procedural bar aside, under the holding of *Turner*, the jury was adequately instructed.

Only when a defendant's substantive rights are affected will the plain-error rule be applied. *Dobbins v. State*, 766 So. 2d 29, 32 (¶5) (Miss. Ct. App. 2000). "The plain-error doctrine requires that there be an error and that the error must have resulted in a manifest miscarriage of justice." *Sims v. State*, 919 So. 2d 264, 266 (¶7)(Miss. Ct. App. 2005) (quoting *Williams v. State*, 794 So. 2d 181, 187 (¶23) (Miss. 2001)(overruled on other grounds)). Given the facts of this case and the evidence presented at trial, there was no manifest miscarriage of justice. This assignment of error is without merit.

V. THE INDICTMENT WAS NOT DEFECTIVE.

Miller contends the Indictment charging him with accessory after the fact of murder is impermissibly vague because it fails to state the name of the individual Winters murdered. Miller was convicted of accessory-after-the-fact to murder.

The Mississippi Supreme Court held in *Hodges v. State*, 912 So.2d 730, (Miss.,2005) that a capital murder indictment charging an underlying felony of burglary with intent to commit an assault was not defective for failure to identify the intended victim of that assault. This Court recognized that “one accused of a crime is entitled to know the specific nature of the allegations against him so that he can prepare his defense, rather than be left guessing as to what specific activity the State contends is a violation of the criminal statute.” *White v. State*, 851 So.2d 400, 403(¶ 5) (Miss.Ct.App.2003).

The crime of accessory after the fact is codified at Mississippi Code Annotated § 97-1-5 (Rev.2000). The statute provides that a person is guilty as an accessory-after-the-fact if he has “concealed, received, or relieved any felon, or [has] aided or assisted any felon, knowing that such person has committed a felony, with intent to enable such felon to escape or to avoid arrest, trial, conviction or punishment....” *Id.* The portion of the indictment charging Miller with accessory after the fact provided, in pertinent part:

On or about the 15th day of February, A.D., 2002, did then and there wilfully, unlawfully, and feloniously aid JERRY MONTEZ WINTERS to avoid arrest, trial conviction or punishment then and there knowing that he, the said JERRY MONTEZ WINTERS, had wilfully, unlawfully and feloniously committed the felony offense of Murder, by assisting him in attempting to locate the murder weapon and other incriminating evidence left at the crime scene, and that the said FREDERICK B. MILLER, JR. rendered such assistance with the unlawful and felonious intent to enable said felon to avoid arrest, trial, conviction, or punishment after the commission of such felony, and against the peace and dignity of the State of Mississippi.

The language of the indictment substantially tracked the statutory definition of the crime.

“The indictment must be a plain, concise and definite written statement of the essential facts constituting the offense charged and shall fully notify the defendant of the nature and cause of the accusation

against him.” *Havard v. State*, 928 So.2d 771 (Miss. 2006) (citing *Peterson v. State*, 671 So.2d 647, 653-54 (Miss.1996)); URCCC 7.06. Additionally, the indictment must contain those factors listed in URCCC 7.06.

Id. The seven factors enumerated in URCCC 7.06 include:

1. The name of the accused;
2. The date on which the indictment was filed in court;
3. A statement that the prosecution is brought in the name and by the authority of the State of Mississippi;
4. The county and judicial district in which the indictment is brought;
5. The date and, if applicable, the time at which the offense was alleged to have been committed. Failure to state the correct date shall not render the indictment insufficient;
6. The signature of the foreman of the grand jury issuing it; and
7. The words “against the peace and dignity of the state.”

Nichols v. State, 955 So.2d 962, (Miss.App.,2007).

Miller’s indictment, satisfies the above requirements. The identity of the murder victim is not an essential element of the crime of accessory after the fact and therefore not required to be named in an indictment for accessory after the fact.

VI. MILLER'S STATEMENT TO AUTHORITIES WAS ADMISSIBLE IN EVIDENCE.

Appellant contends the admission into evidence of his statement to law enforcement was reversible error. Appellant argues the statements taken by law enforcement officers were done so in violation of the Mississippi Youth Court Act because authorities failed to advise him of his right to have a parent present. Appellant further contends that he was not informed that there were charges against him or ever told he was a suspect.

The circuit court has jurisdiction over juveniles who commit felonies on or after their seventeenth birthday. *Ward v. State* 914 So.2d 332, 353 (Miss.App.,2005) Miller was seventeen years old at the time of the commission of the crime of accessory after the fact of murder, which is a felony. Pursuant to the law as discussed under Issue I, supra, Miller was investigated and charged with a crime that would remove him from the Youth Court's jurisdiction.

Prior to being questioned by the Attala County Sheriff's Department, authorities advised Miller of his rights; he intelligently, voluntarily and knowingly waived his rights in accordance with *Miranda v. Arizona*, 384 U.S. 436 (1966). (Exhibit S-16). There is no question that Miller was adequately informed of his rights. He was fully apprised of them by Investigator Roby at the outset of the police interrogation and then "intelligently and understandingly declined to exercise them." *United States v. Montos*, 421 F.2d 215, 224 (5th Cir.1970). No constitutional rights were violated. This assignment of error is without merit.

VII. MILLER'S TRIAL ATTORNEY PROVIDED EFFECTIVE ASSISTANCE OF COUNSEL.

An appellate court applies the two-prong test of *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) in reviewing claims of ineffective assistance of counsel. Miller must prove (1) that counsel's performance was deficient, and (2) but for the deficiencies, the trial court outcome would have been different. *Gatewood v. State*, 909 So.2d 754, 756 (¶ 5) (Miss.Ct.App.2005) The court evaluates the totality of the circumstances in determining whether counsel was effective. *McQuarter v. State*, 574 So.2d 685, 687 (Miss.1990). There is a strong but rebuttal presumption that counsel's performance fell within the wide range of reasonable professional assistance. *Id.*

Miller claims ineffective assistance of council based on the defense attorney's failure to object to the circuit court's jurisdiction of the case and failure to object to the admission into evidence of Miller's statement to law enforcement. As discussed in Issue I, the circuit court had proper jurisdiction to hear the charge against Miller. Therefore, Miller's claims concerning failure to object to circuit court jurisdiction fail.

Miller further claims his trial counsel was ineffective for failing to offer a jury instruction as to the elements of murder. As discussed in Issue IV, *supra*, the court properly instructed the jury. Miller failed into prove a single instance of counsel's deficient performance or that but for his attorney's performance he would have been acquitted. This assignment of error is without merit.

VIII. THERE WAS NO CUMULATIVE ERROR.

Finally, Miller argues that this Court should grant his requested relief based on the cumulative errors committed at trial. However, the State contends that each of Miller's assignments of error is without merit. "As there was no reversible error in any part, so there is no reversible error to the whole." *McFee v. State*, 511 So. 2d 130, 136 (Miss. 1987). Accordingly, this issue is also without merit.

CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal, the State would ask this reviewing court to affirm the jury's conviction of Frederick Miller for accessory after the fact of murder.

Respectfully submitted,

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CERTIFICATE OF SERVICE


I, Lisa L. Blount, 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:

Honorable Joseph H. Loper, Jr
Circuit Court Judge
Post Office Box 616
Ackerman, MS 39735

Honorable Doug Evans
District Attorney
Post Office Box 1262
Grenada, MS 38902-1262

Justin T. Cook, Esquire
Attorney At Law
301 North Lamar Street, Suite 210
Jackson, MS 39201

This the 13th day of February, 2009.



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