

COPY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

EDDIE LEE SAUNDERS

FILED

APPELLANT

APR 12 2010

**OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS**

V.

NO. 2010-KA-0031-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF THE APPELLANT

MISSISSIPPI OFFICE OF INDIGENT APPEALS

Benjamin A. Suber, MS Bar No. [REDACTED]

301 North Lamar Street, Suite 210

Jackson, Mississippi 39201

Telephone: 601-576-4200

Counsel for Eddie Lee Saunders

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

EDDIE LEE SAUNDERS

APPELLANT

V.

NO. 2010-KA-0031-COA

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.

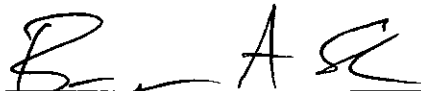
1. State of Mississippi
2. Eddie Lee Saunders, Appellant
3. Honorable John Mark Weathers, District Attorney
4. Honorable Robert Helfrich, Circuit Court Judge

This the 12 day of April, 2010.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:



Benjamin A. Suber
COUNSEL FOR APPELLANT

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS	i
TABLE OF AUTHORITIES	iii
STATEMENT OF THE ISSUES	1
STATEMENT OF THE CASE	3
FACTS	3
SUMMARY OF THE ARGUMENT	5
ARGUMENT	6
ISSUE NO. 1	
EDDIE LEE SAUNDERS WAS IRREPARABLY AND UNFAIRLY PREJUDICED WHEN CHARACTER EVIDENCE OF PREVIOUS INCARCERATION, OTHER WRONGS, ACTS, OR OTHER UNRELATED CRIMES WERE REFERENCED BY THE PROSECUTION IN THE PRESENCE OF THE JURY	6
ISSUE NO. 2	
THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE THAT SAUNDERS COMMITTED MURDER	11
CONCLUSION	13
CERTIFICATE OF SERVICE	14

TABLE OF AUTHORITIES

FEDERAL CASES

<i>Michelson v. United States</i> , 335 U.S. 469, 475-76, 69 S.Ct. 213, 218-19, 93 L.Ed. 168, 173-74 (1948)	7
---	---

STATE CASES

<i>Bush v. State</i> , 895 So. 2d 836, 844 (Miss. 2005)	10
<i>Crawford v. State</i> , 754 So.2d 1211, 1220 (Miss. 2000)	6
<i>Duplantis v. State</i> , 644 So.2d 1235, 1246 (Miss. 1994)	5
<i>Eubanks v. State</i> , 419 So.2d 1330, 1331 (Miss. 1982)	4, 6-9
<i>Floyd v. State</i> , 166 Miss. 15, 148 So. 226 (1933)	7
<i>Herring v. State</i> , 691 So. 2d 948, 957 (Miss.1997)	10
<i>Ladner v. State</i> , 584 So.2d 743, 758 (Miss. 1991)	5
<i>Lamar v. State</i> , 983 So. 2d 364, 367 (Miss. Ct. App. 2008)	10, 11
<i>Loeffler v. State</i> , 396 So.2d 18 (Miss.1981)	4, 6
<i>Massey v. State</i> , 393 So.2d 472 (Miss.1981)	4, 6, 7
<i>Neal v. State</i> , 451 So.2d 743, 759 (Miss. 1984)	5
<i>Scarbrough v. State</i> , 204 Miss. 487, 37 So.2d 748 (1948)	7
<i>Spears v. State</i> , 253 Miss. 108, 175 So.2d 158, 167 (1965)	8
<i>Tanner v. State</i> , 216 Miss. 150, 61 So.2d 781 (1953)	7
<i>Watts v. State</i> , 635 So.2d 1364, 1368 (Miss. 1994)	6

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

EDDIE LEE SAUNDERS

APPELLANT

V.

NO. 2010-KA-00031-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF THE APPELLANT

STATEMENT OF THE ISSUES

ISSUE NO. 1

EDDIE LEE SAUNDERS WAS IRREPARABLY AND UNFAIRLY PREJUDICED WHEN CHARACTER EVIDENCE OF PREVIOUS INCARCERATION, OTHER WRONGS, ACTS, OR OTHER UNRELATED CRIMES WERE REFERENCED BY THE PROSECUTION IN THE PRESENCE OF THE JURY.

ISSUE NO. 2

THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE THAT SAUNDERS COMMITTED MURDER.

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Forrest County, Mississippi, and a judgment of conviction for the crime of murder. Eddie Lee Saunders was sentenced to life in the custody of the Department of Corrections without the benefit or possibility of parole or early release. Saunders was sentenced as a habitual offender as set forth in Mississippi Code Annotated Section 99-19-83 (1972) following a jury trial on July 20-21, 2009, Honorable Robert B. Helfrich, presiding. Saunders is presently incarcerated with the Mississippi Department of Corrections.

FACTS

Alex Anderson (Anderson) went into the Handy Pantry in Hattiesburg, Mississippi, on May 26, 2008. Tr. 82. Anderson walked into the store and saw that a man had left his cell phone on the counter in the store. Tr. 83. Anderson let the man walk away from the counter and walk out of the store without notifying the man that he had left his cell phone on the counter. *Id.* Anderson waited until the man left the store, then he grabbed the phone. *Id.*

Anderson testified that while he had the phone, the phone kept ringing. *Id.* The owner of the cell phone called and Anderson answered. *Id.* Anderson told the phone's owner that his name was Duke¹. Anderson and the owner of the phone arranged for a meeting to return the phone. Tr. 84. Anderson stated that he would give the phone back,

¹Duke was nickname for Charles Moore.

but he wanted fifty (\$50) dollars. *Id.* Anderson never showed up to the meeting to return the phone. *Id.*

Anderson eventually gave the phone to Xavier Jordon (Jordon). Tr. 85. Anderson asked for the phone back from Jordon three (3) days later, because the police came by Anderson's house looking for the phone. Tr. 86.

Charles Harris (Harris) was the man that had his cell phone stolen from the Handy Pantry. Tr. 114. Harris testified that his cell phone was stolen from the Handy Pantry. Tr. 116. Harris stated that someone called claiming to be Duke and wanted fifty (\$50) dollars for Harris's cell phone. Tr. 119. The so-called Duke wanted to meet and make the exchange but Duke never showed up to the prearranged meeting place. Tr. 119-20. Harris claimed to not know Duke.

Someone at the Handy Pantry told Harris where Duke's mother lived. Tr. 124. Harris went over to Duke's mothers and asked if Duke lived in the house and explained the situation of the missing phone. Tr. 124-25. The woman claimed that Duke did not live in the house. Tr. 125.

Harris and Saunders left Duke's mothers house and went back to Saunders house. *Id.* Upon reaching Saunders' house, Saunders asks Harris to pull over by the mail box. *Id.* Harris stated that Saunders was getting out of the vehicle and Harris was picking up a beer out of the floor when Harris heard Saunders saying get down, get down. *Id.*

Harris continued to tell the Court that once he stopped, he saw a car coming toward them. Tr.126. Harris further stated that he started hearing gun shots and Saunders

was out of the vehicle checking the mail. Tr. 127. Harris stated that all of the sudden Saunders jumped into the car and grabbed Harris by the chest and started patting him down. *Id.* Saunders told Harris to drive. *Id.* That was when Harris noticed that Saunders had a gun. *Id.* Harris stated that Saunders was patting him down to see if Harris was shot. Tr. 128. Harris also admitted on cross-examination that he did not see Saunders shoot anyone. Tr. 138. Charles Moore, also known as Duke, was found dead in his car.

Saunders was apprehended and convicted in the death of Charles Moore. Saunders is currently incarcerated with the Mississippi Department of Corrections.

SUMMARY OF THE ARGUMENT

The evidence of a crime other than that charged in the indictment is not admissible evidence against the accused. Mississippi also follows the general rule that proof of a crime distinct from that alleged in the indictment should not be admitted in evidence against the accused. *Eubanks v. State*, 419 So.2d 1330, 1331 (Miss. 1982), *see Loeffler v. State*, 396 So.2d 18 (Miss.1981); *Massey v. State*, 393 So.2d 472 (Miss.1981). Even though the court ordered the jury to disregard the alleged statement, the jury still heard that Saunders had been previously incarcerated. This evidence was unduly prejudicial and therefore Saunders' conviction should be reversed and remanded for a new trial excluding the reference to the alleged prior incarceration.

Saunders asserts that the verdict for aggravated assault was against the overwhelming weight of the evidence. The evidence does not show that Saunders murdered Charles Moore. The only evidence presented to the court that connected

Saunders to the murder was from Harris who originally was a co-defendant. Saunders' fingerprints were not found on the gun. Saunders was not identified by an eye witness as the person that murdered Charles Moore. The verdict was against the weight of the evidence. Saunders asks that the court reverse and remand his case for a new trial.

ARGUMENT

ISSUE NO. 1

EDDIE LEE SAUNDERS WAS IRREPARABLY AND UNFAIRLY PREJUDICED WHEN CHARACTER EVIDENCE OF PREVIOUS INCARCERATION, OTHER WRONGS, ACTS, OR OTHER UNRELATED CRIMES WERE REFERENCED BY THE PROSECUTION IN THE PRESENCE OF THE JURY.

"Generally, evidence of a crime other than that charged in the indictment is not admissible evidence against the accused." *Duplantis v. State*, 644 So.2d 1235, 1246 (Miss. 1994); *Ladner v. State*, 584 So.2d 743, 758 (Miss. 1991). "However, where another crime or act is 'so interrelated [to the charged crime] as to constitute a single transaction or occurrence or a closely related series of transactions or occurrences,' proof of the other crime or act is admissible." *Duplantis*, 644 So.2d at 1246 (*quoting Wheeler v. State*, 536 So.2d 1347, 1352 (Miss. 1988)); *Neal v. State*, 451 So.2d 743, 759 (Miss. 1984).

The statement and references about Saunders' alleged prior bad acts, incarceration, fall within the area of bad acts as contemplated by M.R.E. 404(b). Mississippi Rule of Evidence 404(b) provides:

Other Crimes, Wrongs, or Acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other

purposes such as proof of motive, opportunity, intent, preparation, plan knowledge, identity, or absence of mistake or accident.

Mississippi Rules of Evidence 404(b).

A two-part analysis is conducted in order to determine whether to admit evidence under Rule 404(b). “The evidence offered must (1) be relevant to prove a material issue other than the defendants’s character; and (2) the probative value of the evidence must outweigh the prejudicial effect.” *Crawford v. State*, 754 So.2d 1211, 1220 (Miss. 2000).

The Mississippi Supreme Court stated that in order to pass muster under Rule 404(b), evidence must “be such that it satisfies some other evidentiary purpose beyond simply showing that [the defendant] is the sort of fellow likely to commit the crime charged.” *Watts v. State*, 635 So.2d 1364, 1368 (Miss. 1994) (quoting *Jenkins v. State*, 507 So.2d 89, 91 (Miss. 1987)). Even if the evidence does pass muster under Rule 404(b), it must still pass the test of Rule 403. *Watts*, 635 So.2d at 1368. The Court in *Jenkins* also stated:

To be sure, evidence admissible under Rule 404(b) is also subject to the prejudice test of Rule 403; that is, even though the Circuit Court considered the evidence at issue under Rule 404(b), it was still required by Rule 403 to consider whether its probative value on the issues of motive, opportunity and intent was substantially outweighed by the danger of unfair prejudice. In this sense Rule 403 is an ultimate filter through which all otherwise admissible evidence must pass. *Watts*, 635 So.2d at 1368 (Miss. 1994) (quoting *Jenkins*, 507 So.2d at 93 (Miss. 1987)).

Mississippi also follows the general rule that proof of a crime distinct from that alleged in the indictment should not be admitted in evidence against the accused. *Eubanks v. State*, 419 So.2d 1330, 1331 (Miss. 1982), *see Loeffler v. State*, 396 So.2d 18 (Miss.1981); *Massey v. State*, 393 So.2d 472 (Miss.1981). In *Massey*, the Mississippi Supreme Court

cited *Floyd v. State*, 166 Miss. 15, 148 So. 226 (1933), which set forth the reason for this rule. “The reason and justice of the rule is apparent, and its observance is necessary to prevent injustice and oppression in criminal prosecutions. Such evidence tends to divert the minds of the jury from the true issue, and to prejudice and mislead them, and, while the accused may be able to meet a specific charge, he cannot be prepared to defend against all other charges that may be brought against him.” *Eubanks*, 419 So.2d at 1331. “To permit such evidence . . . would be to put a man's whole life in issue on a charge of a single wrongful act, and crush him by irrelevant matter, which he could not be prepared to meet.” 1 Bish. Crim. Proc. § 1124. (*Floyd*, 166 Miss. at 35, 148 So. at 230); *Massey*, 393 So.2d at 474.

The Mississippi Supreme Court stated that they were mindful of that general rule, but it has many exceptions. *Tanner v. State*, 216 Miss. 150, 61 So.2d 781 (1953). However in *Eubanks*, the State's contention that the testimony complained of was admissible as part of the *res gestae* and was necessary to prove Officer Farlow was making a lawful arrest within the scope of his duty was without merit in the Court's opinion. The separate alleged crimes and misconduct of June 21, 1980, are not so connected that they form a single criminal transaction and cannot be separated.

The Court continued to state that they are of the opinion that Farlow's testimony concerning the warrant for reckless driving on state property, possession of alcoholic beverages on state property, failing to yield to a blue light and resisting arrest, was admissible to prove Farlow was acting within his authority to arrest Eubanks. However, it was error for

the trial court to allow Farlow and Shoemake to testify as to the details of the incident at Lake Perry on June 21, 1980. There was no connection between the facts surrounding that incident and the charge of simple assault for which Eubanks was tried. *Eubanks*, 419 So.2d at 1331-32.

Eubanks was reversed and remanded for reasons enumerated in *Spears v. State*, 253 Miss. 108, 175 So.2d 158, 167 (1965), wherein the Supreme Court quoted from *Scarborough v. State*, 204 Miss. 487, 37 So.2d 748 (1948), stating:

“This is not one of those cases for the application of the rule that a conviction will be affirmed unless it appears that another jury could reasonably reach a different verdict upon a proper trial than that returned on the former one, but rather it is a case where the constitutional right of an accused to a fair and impartial trial has been violated. When that is done, the defendant is entitled to another trial regardless of the fact that the evidence on the first trial may have shown him to be guilty beyond every reasonable doubt. The law guarantees this to one accused of crime, and until he has had a fair and impartial trial within the meaning of the Constitution and Laws of the State, he is not to be deprived of his liberty by a sentence in the state penitentiary.” 204 Miss. at 497, 37 So.2d at 750).

The Court in *Eubanks* also stated that by “[e]xcluding the prejudicial testimony complained of we are aware there was ample evidence to convict Eubanks for simple assault. However, the State, by continuously placing before the jury throughout the trial evidence designed to show Eubanks guilty of other and former misconduct, constituted prejudicial error. The combination of all this prejudicial testimony being introduced before the jury in a prosecution for simple assault, in our opinion, precluded the possibility of a fair trial upon the charge in the indictment.” *Eubanks*, 419 So.2d at 1332 (quoting *Sumrall v. State*, 272 So.2d 917 (Miss.1973)).

In the present case, one of the prosecution's witnesses stated that the only time she and Saunders were split up was when he went to jail. Tr. 164. Saunders immediately objected to which the court ordered the jury to disregard that last remark. Tr. 165. Even though the court ordered the jury to disregard that remark, the jury still heard that Saunders had been previously incarcerated. With the prejudicial testimony being referenced before the jury, Saunders was precluded from receiving a fair trial upon the charge of the indictment. *Eubanks*, 419 So.2d at 1332; *Sumrall*, 272 So.2d at 917.

Even if evidence referenced to the court is relevant, Mississippi Rule of Evidence 403 provides that "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury," *Watts*, 635 So.2d at 1368 (Miss. 1994). "Candor requires acknowledgment that, though technically relevant in the sense just mentioned, evidence of the character of that at issue here is not of great probative value." *Id.* However, "[i]f presented to the jury, it has great prejudicial effect and it would arguably inject collateral issues into the case. *Id.* See *Michelson v. United States*, 335 U.S. 469, 475-76, 69 S.Ct. 213, 218-19, 93 L.Ed. 168, 173-74 (1948); *McCormick, The Law of Evidence*, Section 190. The evidence in the case at hand was given directly to the jury from prosecution. The possibility arises that the jury improperly inferred that Saunders "committed the crime for which he is on trial because he is a person who has displayed criminal propensities in the past." *Watts*, 635 So.2d at 1368 (Miss. 1994) (quoting *Jenkins*, 507 So.2d at 92 (Miss 1987)); *McCormick, the Law of Evidence*.

By the court not granting a mistrial, was error. Saunders is entitled to a new trial. This court should reverse Saunders' murder conviction and remand for a new trial without the evidence of a prior incarceration.

ISSUE NO. 2

THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE THAT SAUNDERS COMMITTED MURDER.

In reviewing a challenge to the weight of the evidence, the verdict will be only be disturbed "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 (Miss. 2005). The evidence is viewed in the light most favorable to the verdict. *Id.* (citing *Herring v. State*, 691 So. 2d 948, 957 (Miss.1997)). This Court "sits as a hypothetical thirteenth juror." *Lamar v. State*, 983 So. 2d 364, 367 (¶5) (Miss. Ct. App. 2008) (citing *Bush*, 895 So. 2d at 844 (¶18)). "If, in this position, the Court disagrees with the verdict of the jury, 'the proper remedy is to grant a new trial.'" *Id.* In the instant case, the overwhelming weight of the evidence established that Saunders did not commit the murder against Charles Moore.

The evidence is not present that shows Saunders was the person that killed Charles Moore. Through Harris' own testimony, the cell phone that was stolen belonged to Harris not to Saunders. Tr. 116. Harris also stated that he went back to the Handy Pantry looking for his cell phone. He also found out where Duke lived or his mother's house. Tr. 124.

Harris was the one who went to Duke's mother's house looking for Duke. *Id.* By his own admission, he suggested go over to Duke's house or mother's house to look for Duke. *Id.*

Harris' testimony is the own testimony that ties Saunders to the murder of Charles Moore. All of the other witnesses claim to have heard the shots or saw the car with both Saunders and Harris inside the vehicle.

Furthermore, Harris even claimed that he not see Saunders shoot anyone. Tr. 138. Harris did tell the court that Saunders got back into the car after the gun shots and checked Harris to make sure he was not shot. Tr. 127. That evidence suggests that someone else other than Saunders was shooting a gun.

Moreover, Saunders fingerprints were not found on the gun. Tr. 247-48. Harris claimed during his testimony that Saunders had a gun, but in all other conversations or statements to police he claimed that Saunders never had a gun. Tr. 135.

There were no eyewitnesses to the murder. Saunders was not identified by anyone in a photo line-up as the person who shot Charles Moore. Saunders was only identified during the trial as someone that was seen around the time of the murder. Harris was also seen.

In light of the above-detailed evidence, the verdict reached in the instant case is contrary to the overwhelming weight of the evidence. Therefore, the trial court erred in denying Saunders' motion for a new trial, and this Court should reverse Saunders' conviction and remand this case for a new trial.

CONCLUSION

Eddie Lee Saunders is entitled to have his murder conviction reversed and remanded for a new trial.

Respectfully submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS
For Eddie Lee Saunders, Appellant

BY: 

BENJAMIN A. SUBER

MISSISSIPPI BAR NO 

MISSISSIPPI OFFICE OF INDIGENT APPEALS
301 N. Lamar Street, Suite 210
Jackson, Mississippi 39201
Telephone: 601-576-4200

CERTIFICATE OF SERVICE


I, Benjamin A. Suber, Counsel for Eddie Lee Saunders, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

Honorable Robert Helfrich
Circuit Court Judge
P.O. Box 849
Hattiesburg, MS 39403-0309

Honorable John Mark Weathers
District Attorney, District 12
Post Office Box 166
Hattiesburg, MS 39403

Honorable Jim Hood
Attorney General
Post Office Box 220
Jackson, MS 39205-0220

This the 12 day of April, 2010.



Benjamin A. Suber
COUNSEL FOR APPELLANT

MISSISSIPPI OFFICE OF INDIGENT APPEALS
301 North Lamar Street, Suite 210
Jackson, Mississippi 39201
Telephone: 601-576-4200