

CASE NO. 2010-KM-00263-COA

COURT OF APPEALS FOR THE STATE OF MISSISSIPPI

DEBBIE MILLS

Appellant.

v.

CITY OF WATER VALLEY, MISSISSIPPI

Appellee

On Appeal from the Circuit Court of Yalobusha County
for the 17th Circuit District, State of Mississippi
Judge Jimmy McClure III

**BRIEF OF APPELLEE
CITY OF WATER VALLEY**

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NO ORAL ARGUMENT REQUESTED

IN THE COURT OF APPEALS FOR THE
STATE OF MISSISSIPPI

DEBBIE MILLS

APPELLANT

V.

CASE NO. 2010-KM-00263-COA

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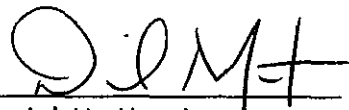
APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of the case. These representations are 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. Debbie Mills, Appellant
2. Timothy Tidwell, Victim
3. Tommy W. Defer, Counsel for the Appellant
4. John J. Crow, Jr., Prosecuting Attorney for the City of Water Valley, MS
5. Daniel M. Martin, Prosecuting Attorney for the City of Water Valley, MS
6. City of Water Valley, Mississippi, Prosecuting Municipality
7. Honorable Jimmy McClure III, Presiding Judge of the Circuit Court

This the 4th day of October, 2010.



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STATEMENT OF ORAL ARGUMENT

It is the position of the City of Water Valley, Mississippi that oral argument by the parties is not needed. The facts and law presented herein are straight forward, and this particular issue has been presented before this Court numerous times through the years. As such, oral argument would likely only produce a repetition of those arguments this Court has already heard and that are presented again here in the following brief. Appellee feels that such a repetition would be a waste of this Court's time and resources.

STATEMENT OF THE ISSUES

- 1: Whether the evidence presented was legally insufficient to support the trial court's finding of guilty beyond a reasonable doubt, therefore making the trial court's decision to deny the Appellant's Motion for Judgment Notwithstanding the Verdict reversible error.
- 2: Whether the weight of the evidence supported the trial court's decision to deny appellant's motion for a new trial.

STATEMENT OF THE CASE

Procedural History

Appellant Debbie Mills¹ was convicted in the Municipal Court of Water Valley, Mississippi, on July 9, 2009, for the criminal offense of Simple Assault Domestic Violence and was sentenced by the lower court to pay a fine and court costs. Clerk's Papers at page 11². Mills was found guilty of committing an act of domestic violence by causing physical bodily injury to Timothy Tidwell by biting and striking him with a closed fist. CP-18. The Parties resided in the same household and had a dating relationship at the time of the assault. *Id.* Following her conviction in the lower Municipal Court, Mills timely filed her notice of appeal to the Circuit Court of Yalobusha County, Second Judicial District, for a trial de novo. CP-6.

The Circuit Court conducted a bench trial on October 13, 2009, and after hearing testimony from three witnesses found Mills guilty of Simple Assault Domestic Violence and assessed Appellant a fine in the amount of \$300.00 and ordered her to attend an anger management program. CP-52-53. Mills subsequently and timely filed a Motion for Judgment Notwithstanding the Verdict or in the Alternative for a New Trial. CP-49. The trial court denied Mills' Motion, and Appellant, following this denial, timely appealed her conviction to this Court. CP-51, 55-56.

Statement of the Facts

At 12:24 A.M., on May 17, 2009, Officer Christopher Blair and Officer Steven Story of the City of Water Valley Police Department were dispatched to 410 North Court Street in response to a physical disturbance between a man and a woman.

¹ Hereinafter "Mills"

² Hereinafter references to the Clerk's Papers will be cited to as CP.

Transcript page 3, lines 22-26; Transcript page 13, lines 2-7.³ When Officer Blair arrived at the above address, two juvenile females were standing at the end of the driveway screaming and crying. T-3-4, lines 29-3. Upon exiting his patrol car, the Officer also heard screams coming from the inside of the home. T-4, lines 4-5. When Officer Story entered the residence, Mills was being restrained by her grandson. T-13, lines 5-7.

Upon entering the house and surveying the scene, Officer Blair testified that Mills was

“kicking and squirming, screaming to let her go. She was cursing, screaming that she wanted all of us to get the “F” out of her house. She also stated that she was going to kill the white male subject, [Mr. Tidwell].”

T-4, lines 21-28; T-13, lines 18-19, name in brackets added for clarity. When asked in which direction Mills was trying to go towards, Officer Blair responded that “she was trying to get towards Mr. Tidwell.” T-5, lines 1-3.

Officer Blair testified that the victim’s shirt was torn, that he had a large bite mark on his chest and his back, that he also had a cut on his cheek, on the bridge of his nose, and on his back. T-6, lines 11-27; T-13, lines 20-25. Officer Blair also stated that there were numerous bruises on Mr. Tidwell’s back. *Id.*, at T-6. At this time, Officer Blair stated that Mills “had some blood coming from her mouth a little bit...and I could notice that one of her teeth was broken in half.” *Id.* Officer Story testified that Mills’ eyes were “real bloodshot...and as I walked closer to her, I could smell that she had been drinking.” T-14, lines 16-19.

³ Hereinafter the Trial Transcript will be cited to as T.

Officer Blair then arrested Mills, took her outside and placed her in Officer Story's patrol car. T-7, lines 3-13. After placing Mills in the patrol car, the Officer called for an ambulance, questioned Mr. Tidwell about the night's events, and took pictures of the victim's injuries. T-7, lines 19-29. Said pictures were entered into evidence as City of Water Valley Exhibits 1 through 6. T-9, line 22-23.

The proof showed at trial that on July 10, 2009, Mills filed a petition for an ex parte domestic violence protective order against the above victim, Timothy Tidwell, wherein she states that Timothy Tidwell and herself had a domestic relationship. CP-39. On page three (3) of the petition, which is a form supplied by the City of Water Valley, paragraph ten (10) states that "the Petitioner contends that the Respondent has:." CP-40. Following that phrase is a checklist of actions Mills had to choose from to describe the actions she contended Timothy Tidwell had done to cause her to seek the protective order. *Id.* The only item checked states "placed, by physical menace or threat, the Petitioner in fear of imminent serious bodily injury." *Id.* What is not checked is the item that states "attempted to cause or has intentionally, knowingly or recklessly caused bodily injury or serious bodily injury to Petitioner." *Id.*

The above proof concluded City of Water Valley's case in chief and it rested, Mills did not put on a defense of the charge against her.

SUMMARY OF THE ARGUMENT

Appellant alleges that the trial court erred in denying Appellant's Motion for Judgment Notwithstanding the Verdict or in the Alternative for a New Trial. The Trial Court Judge's decision to deny the Appellant's motion however rests on the credible testimony of the Water Valley Police Officers and the numerous photos illustrating the

wounds suffered by the victim, and is supported by both the requisite sufficiency and weight of the evidence.

1. Whether the evidence was legally sufficient to support the guilty verdict.

STANDARD OF REVIEW

A review of a claim of error for failure to grant a motion for judgment notwithstanding the verdict is de novo. *Hill v. State*, 17 So.3d 1092, 1098 (Miss.App. 2009). The Court must ask itself whether, “after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Bush v. State*, 895 So.2d 836, 843 (Miss 2005); citing *Jackson v. Virginia*, 443 U.S. 307, 315 (1979). In performing the above duty, the court is not required to determine if it itself “believes that the evidence at the trial established guilt beyond a reasonable doubt.” *Id.* For the court to deem that the evidence was sufficient and that the conviction should stand, the court must satisfy to itself that the evidence is of such quality and weight that “having in mind the beyond a reasonable doubt burden of proof standard, reasonable fair-minded men in the exercise of impartial judgment might reach different conclusions on every element of the offense.” *Id.* If however, the facts and inferences would lead reasonable men to not find the defendant guilty beyond a reasonable doubt on any one of the elements of the offense, then the appellate court must reverse and render. *Id.*

Rule of Law

The matter sub judice is a domestic simple assault case. The appellant was charged with violating Miss. Code Ann. § 97-3-7. Mss. Code Ann. 97-3-7(1) states that

“a person is guilty of simple assault if he (a) attempts to cause or purposely, knowingly or recklessly causes bodily injury to another.” (West 2009). “A person is guilty of simple domestic violence who commits simple assault as described in subsection (1) of this section against...a person who has a current or former dating relationship with the defendant.” Miss. Code Ann. § 97-3-7(3) (West 2009).

The appellant was convicted by circumstantial evidence. The Supreme Court has repeatedly upheld the rule that “the proof need not be direct and the jury may draw any reasonable inferences from all the evidence in the case.” *Campbell v. State*, 278 So.2d 420, 423 (Miss. 1973). It is a common facet of our court process that the trier of fact is expected to make logical and reasonable inferences and presumptions. *Travis v. State*, 972 So.2d 674, 680 (Miss.App. 2007); citing *Broomfield v. State*, 878 So.2d 207, 215 (Miss.App.2004). The trier of fact should give as much weight to circumstantial evidence as any other evidence in a criminal case. *Anthony v. State*, 23 So.3d 611, 623 (Miss.App. 2009); citing *Tolbert v. State*, 407 So.2d 815 (Miss. 1981). “Circumstantial evidence need not exclude every possible doubt, but only every other reasonable hypothesis of innocence.” *Id.* The Mississippi Court of Appeals has stated that “we will affirm if any trier of fact could have found the essential elements of the crime beyond a reasonable doubt and excluding every reasonable hypothesis consistent with innocence.” *Travis*, at 680; citing *Dunaway v. State*, 919 So.2d 67 (Miss.App. 2005).

Argument

The question here is whether there was sufficient evidence for the trial judge to base his findings and therefore deny Mills’ motion for judgment notwithstanding

the verdict. While the appellant was convicted using circumstantial evidence, the evidence points towards a conclusion beyond a reasonable doubt that Debbie Mills is guilty of domestic simple assault. There was no alternative hypothesis as to how the injuries were received by the victim, Timothy Tidwell. As stated by the Court in *Travis*, our Court system expects the trier of fact to receive the evidence presented at trial and produce reasonable inferences and assumptions as to what actually transpired. In this instance, the trial judge was the trier of facts, and from the evidence presented, he concluded that Mills had in fact committed domestic simple assault against the victim, Timothy Tidwell. All the facts were there for him to make this finding.

First, when the police arrived on scene, the officers could hear screams coming from inside the residence. T-4, lines 4-5. From this, the trier of fact can deduce that the Police arrived either during the attacks or mere moments later. This is not a case that is built on facts that are hours old. When officers arrived, the victim and Mills were bleeding, Mills was cursing, physically out of control and having to be bodily restrained by her grandson. T-4, lines 21-28; T-6, lines 11-27; T-13, lines 5-7, 20-25. When confronted by the police, Mills chaotically demanded that the officers should leave and stated that she wanted to kill the victim. T-4, lines 21-28. The victim suffered numerous injuries ranging from bleeding bite marks to bruises. T-6, lines 11-27. Mills suffered from some oral bleeding and a visibly broken tooth. *Id.*

It is a simple deduction of facts and evidence that the injuries suffered by Mills were induced by her own actions of biting the victim Timothy Tidwell. She was bleeding from the mouth and suffered from a broken tooth while the victim clearly

suffered from multiple bite marks. T-6, lines 11-27. It is a reasonable conclusion for trier of fact to determine that Mills had in fact bitten the victim. Further, the language of Mills was offensive, vulgar, and angry. T-4, lines 21-28. It was clear from Mills' outbursts that she was not intimidated by the appearance of the police and that she was speaking freely when the officers entered her house, yet she made no accusations of being attacked or of having to defend herself. Had Mills been attacked by the victim, Timothy Tidwell, she surely would have indicated that to the police. Instead, she only indicated to the police her desire to kill the victim. Her own grandson was restraining her. T-13, lines 5-7. It is incredible to believe that this woman's juvenile grandson would not stand in her defense against an attacker but would instead restrain her for the attacker's benefit.

The proverbial nail in the coffin to the defense that Mills was acting in self-defense was the fact that in the petition for the domestic violence protective order she did not state that the victim Timothy Tidwell had ever hit or physically abused her. CP-39. Mills filed the request against Timothy Tidwell less than two months after her arrest. *Id.* Surely not a long enough period of time for her to have forgotten the events of that night. In that document, Mills had the opportunity to state whether she had suffered any bodily injury at the hands of Timothy Tidwell. CP-40. In the available space, however, the appellant did not make any allegations of injury, but stated that the victim had placed her in fear by physical menace or threat. *Id.* Therefore, it can be concluded that Timothy Tidwell never hit, struck, or attacked Mills. However, in that same document, Mills did state that she and the victim shared a domestic relationship. CP-39.

The evidence presented herein is legally sufficient, excludes all reasonable hypothesis of innocence, and points to only one reasonable conclusion that can be had beyond a reasonable doubt. Debbie Mills is guilty of purposely, knowingly or recklessly causing bodily injury to Timothy Tidwell, a person with whom she had a current dating relationship.

2. Whether the evidence had sufficient weight to support a guilty verdict.

Standard of Review / Rule of Law

An appellate court reviews a denial of a motion for new trial for an abuse of discretion by the trial court. *Hill, supra*, at 1099. The Supreme Court has stated that:

When reviewing a denial of a motion for a new trial based on an objection to the weight of the evidence, we 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. We have stated that on a motion for new trial, the court sits as a thirteenth juror. The motion, however, is addressed to the discretion of the court, which should be exercised with caution, and the power to grant a new trial should be invoked only in exceptional cases in which the evidence preponderates heavily against the verdict. However, the evidence should be weighted in the light most favorable to the verdict.

Id., quoting *Bush v. State*, 895 So.2d 836, 844 (Miss.2005). In reviewing the evidence presented at trial, that evidence supporting the defendant's guilt is taken as "true together with any reasonable inferences that may be drawn from that evidence." *Walker v. State*, 40 So.3d 652, at 656, (Miss.App. 2010), citing *Young v. State*, 891 So.2d 813, 821 (Miss. 2005).

Argument

For the trial court to have abused its discretion in denying Mills' motion for a new trial, it must be shown that the court's finding that Mills caused bodily injury to the victim, who she was also in a dating relationship with, was so contrary to the overwhelming weight of the evidence that to allow it to stand would be an unconscionable injustice. As set out in the previous argument, the facts while circumstantial, support the conclusion beyond a reasonable doubt that Mills is guilty of purposely, knowingly or recklessly causing bodily injury to Timothy Tidwell, a person with whom she had a current dating relationship.

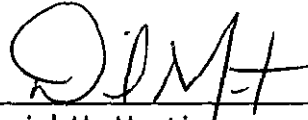
There is ample evidence to support the court's verdict. The victim suffered from bite marks. Mills exhibited blood at the corner of her mouth and a broke tooth, supporting the conclusion that she in fact was the person responsible for the bite marks. The victim suffered from bodily bruises. Upon the Water Valley Police Officers entering Mills' house, she was straining towards the victim, shouting obscenities at the police, and stating that she would kill the victim, supporting the conclusion that she was the aggressor. The evidence does not preponderate heavily against the verdict.

Conclusion

All of Mills' arguments are without merit. In viewing the evidence in a light most favorable to the prosecution and the guilty verdict, the Appellate Court should be able to find only one reasonable conclusion. Debbie Mills is guilty of simple domestic assault for having bitten Timothy Tidwell and having struck him with a closed fist. There is no reasonable alternative hypothesis as to what occurred on May

17, 2009 between Mills and the victim. The trial court's verdict of guilty should be affirmed.

Dated the 4th day of October, 2010.

A handwritten signature in black ink, appearing to read 'D. Martin', written over a horizontal line.

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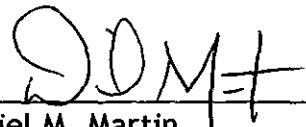
CERTIFICATE OF SERVICE


I, Daniel M. Martin, attorney for Appellee, City of Water Valley, Mississippi, do hereby certify that I have this day served a true and correct copy of the Brief of Appellee, by United States Mail, postage pre-paid, to the following persons at these addresses:

Mr. Tommy W. Defer
Law Office of Tommy W. Defer, PLLC
111 Calhoun Street
Water Valley, MS 38965

Honorable Jimmy McClure
Circuit Court Judge
P. O. Box 246
Sardis, MS 38666

This the 6th day of October, 2010.

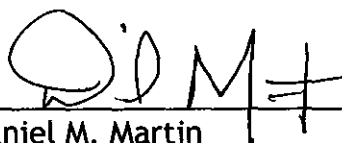


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CERTIFICATE OF FILING

I, Daniel M. Martin, attorney for Appellee, City of Water Valley, Mississippi, do hereby certify that I will deposit on this day to be mailed by first class United States Mail, postage pre-paid, to the clerk of the Court one original and three (3) true and correct copies of the Brief of Appellee, City of Water Valley.

This the 6th day of October, 2010.

A handwritten signature in black ink, appearing to read 'D.M. Martin', written over a horizontal line.

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