

# **FILE**

*State v. Miller*

*State of Franklin*  
State's Attorney, Williamson County  
Courthouse Square  
Fairfield City, Franklin 33001

**MEMORANDUM**

**TO:** Applicant February 24, 2004  
**FROM:** Karla Lee, Assistant State's Attorney  
**RE:** *State v. Miller*

Defendant, Tom Miller, is charged with two counts of aggravated assault, which involve domestic violence against Jan Adams. The charges result from actions he took on October 29, 2003 and November 5, 2003. He pleaded not guilty to the charges and the case is set for jury trial.

At a pretrial conference we gave him timely notice, as required by Franklin Rule of Evidence 418E, of our intention to introduce at trial evidence of his three prior acts of violence. He has been convicted of a prior assault upon Jan Adams on February 12, 2003, and one assault upon a minor, Sara Kelly, in the presence of her mother, Jan Adams, on September 21, 2002. We also know of an earlier assault upon Jan Adams on or about July 4, 2001. No charges were ever filed on the July 4, 2001 incident.

Defense counsel objected to the admission of this evidence, claiming that:

- None of the prior incidents constitutes domestic violence under Franklin Penal Code § 501, and therefore, Franklin Rule of Evidence 418 does not apply;
- Each prior incident constitutes inadmissible character evidence under Franklin Rule of Evidence 404A; and
- Even if the evidence is admissible under Franklin Rule of Evidence 404B or 418, the court should exercise its discretion under Franklin Rule of Evidence 403 to exclude the evidence.

Judge Gebippe has ordered both parties to submit concurrent briefs in support of our positions on each objection raised by defense counsel. Please prepare ours. Because of the concurrent filing, we will not have an opportunity to submit a rebuttal brief, so be sure to set forth all our arguments.

*State of Franklin*  
State's Attorney, Williamson County  
Courthouse Square  
Fairfield City, Franklin 33001

**MEMORANDUM**

July 1, 2000

**TO:** Assistant State's Attorneys  
**FROM:** John Copper, State's Attorney  
**RE:** Persuasive Briefs and Memoranda

To clarify the expectations of the office and to provide guidance to all attorneys, all persuasive briefs or memoranda, such as Memoranda of Points and Authorities, to be filed in state court shall conform to the following guidelines.

All of these documents shall contain a Statement of Facts. Select carefully the facts that are pertinent to the legal arguments. The facts must be stated accurately, although emphasis is not improper. The aim of the Statement of Facts is to persuade the tribunal that the facts support our position.

Following the Statement of Facts, the Argument should begin. This office follows the practice of writing carefully crafted subject headings that illustrate the arguments they cover. The argument heading should succinctly summarize the reasons the tribunal should take the position you are advocating. A heading should be a specific application of a rule of law to the facts of the case and not a bare legal or factual conclusion or statement of an abstract principle. For example, improper: THE WITNESS IS COMPETENT TO TESTIFY. Proper: A FIVE-YEAR-OLD WHO ADMITTED HER MOTHER WOULD NOT PUNISH HER FOR LYING, BUT STILL TESTIFIED SHE KNEW THAT LYING WAS WRONG, IS COMPETENT TO TESTIFY

The body of each argument should analyze applicable legal authority and persuasively argue how the facts and law support our position. Authority supportive of our position should be emphasized, but contrary authority should generally be cited, addressed in the argument, and explained or distinguished. Do not reserve arguments for reply or supplemental briefs.

Assistants need not prepare a table of contents, a table of cases, or the index. These will be prepared after the draft is approved.

TRANSCRIPT OF INTERVIEW WITH JAN ADAMS  
BY DETECTIVE TINA RUIZ

November 15, 2003

**Det. Ruiz:** Good Afternoon, Ms. Adams. I am Tina Ruiz, the detective assigned to this case. I know you have already talked to the police about this, so I ask your patience as we go through it again.

**Ms. Adams:** That's okay. I understand.

**Q:** You've said it's okay for me to tape record this, right?

**A:** Yeah, that's okay.

**Q:** Let's start with some background information. Where do you live?

**A:** Fairfield City, here in Franklin.

**Q:** Tell me about Tom Miller.

**A:** He and I met in June 2001.

**Q:** How would you describe your relationship?

**A:** It was a close, personal relationship. I guess you would call it intimate. We lived together. I even added Tom to the lease and we shared expenses for almost a year. That was until the end of September 2002.

**Q:** In September 2002, what happened?

**A:** I moved out of the apartment with my daughter, Sara. She was six years old at the time. Anyway, on October 1, 2002, we moved into a different apartment in Fairfield City.

**Q:** Did Mr. Miller move with you and Sara?

**A:** No, but Tom and I had planned to move together. In fact, he helped choose the new apartment and we split the cost of the security deposit. We also had keys made for both of us. Then we had a fight and split up. Sara and I moved without Tom, but I never got the key back from him.

**Q:** So, Mr. Miller didn't live with you after you moved on October 1, 2002, right?

**A:** That's right.

**Q:** And, how about a year later in October 2003? He wasn't living with you then either, was he?

**A:** No, he wasn't.

- Q:** Now I know this may be difficult, but we need to review what happened a few weeks ago. Can you tell me what happened on October 29, 2003?
- A:** Tom came to the apartment and let himself in. My daughter, Sara, was at school and after lunch, I decided to take a nap so I went to bed. Then, around 2:30 in the afternoon, I heard someone come into the apartment. It was Tom.
- Q:** Then what happened?
- A:** He came into my bedroom and swore at me, and yelled at me to get up off the bed. He was real mad.
- Q:** Did he say why he was angry?
- A:** He said he found out that I'd been talking to my ex-husband, Charles Kelly, Sara's dad.
- Q:** What happened after Mr. Miller yelled at you?
- A:** He ordered me to get Charles on the phone. Tom grabbed the phone from me and started yelling at Charles and cursing him over the phone. He told Charles to stay away from me or else he'd regret it. He kept saying, "There'll be trouble." Tom has always been jealous of my relationship with Charles. I've always felt that Tom's hatred of Charles makes him resent Sara. He knows it hurts me when he takes it out on Sara.
- Q:** Getting back to October 29, 2003, what else happened?
- A:** I told him I had had enough and I didn't want to see him anymore. Then, he slapped me so hard I hit my head against the wall. He warned me that if I reported him to the police and he went to jail, "When I get out, I'm going to kill you and your precious little Sara." Then he left.
- Q:** What did you do?
- A:** Well, about then Sara came home from school. I called Mr. Liang - that's the apartment manager - and asked him to change the locks.
- Q:** Did you see Mr. Miller again?
- A:** Yes, about a week later. He came back around 1:00 A.M. on November 5, 2003, pounding on my door and window, making noises, yelling for me to let him in.
- Q:** Did you let him in?
- A:** No way. Mr. Liang apparently told Tom to leave the property. I guess he heard all the commotion. Anyway, Tom left, but about two hours later, Tom called the apartment, telling me to open the door. He must have called three or four times over a couple of hours.
- Q:** Did you talk with him?

**A:** No, I let the answering machine take the messages. I knew it was Tom, though. I have caller ID and it was his phone number and it was his voice on the machine. No doubt about that.

**Q:** Did he say anything else?

**A:** Yeah, he told me that I would regret sending him away, and that I had better let him in or else, and that I would find out what he could do to me and Sara if I called the police again. In the last call, he told me he would never allow me to leave him, and said, "You're my woman until I say so." Those were his exact words on the answering machine.

**Q:** After the phone calls, what happened?

**A:** About two hours after his last telephone call, I heard a crash in Sara's room. I went in there and saw a great big rock and glass all over the floor. I looked out and saw Tom standing there. The next day I went to a women's crisis center for help in getting a restraining order, and I gave a statement to a police officer. By the way, have you spoken to Tom?

**Ruiz:** Very briefly. He pretty quickly asked for a lawyer.

**Adams:** I assume he denies everything.

**Ruiz:** Absolutely, denies he did it, says it was probably Charles who threw the rock. Was October 29, 2003, the first time you had trouble like this with Mr. Miller?

**A:** No. He had caused trouble for me before, that was why we broke up when we were moving.

**Q:** Tell me about that.

**A:** On September 21, 2002, I remember the date. That's when I asked him to pack his stuff and leave because he had yelled at Sara and pushed her against a wall.

**Q:** What happened?

**A:** Sara had been sick and when she is sick, she gets whiny and tired and cranky and Tom can't stand her then. So he got mad at her and told her to quit whining. She said she wasn't whining, and he told her to shut up and listen to him and then he pushed her into the wall. Then he left the apartment.

**Q:** What did you do?

**A:** I called the police. I thought that it would teach him a lesson. That's when I told him he was not moving with us.

**Q:** On this date in September when he pushed Sara, did Mr. Miller hurt you?

**A:** No, but I could not stand to see Sara get hurt. That was when I drew the line. I told him to get out.

**Q:** Was there another time when he hurt you?

**A:** On February 12, 2003, he came over. He was about to go to court for the incident where he pushed Sara. He wanted me to change my story and drop the charges.

**Q:** What happened?

**A:** I said there was nothing I could do about it because the prosecuting attorney told me that it was in the state's hands now. Tom got real mad and pushed me against the wall and stuck his finger in my eye and hit me in the face and choked me. He said that I would live to wish I had never called the police. Finally, he left and I called the police. About an hour after the police left, a rock broke my living room window. I was in the bedroom at the time and I heard this crashing noise. I went into the living room and saw that the window was broken. Then I saw Tom's car leaving the driveway immediately afterwards.

**Q:** Were you hurt when the rock came in the house?

**A:** No. I was in the bedroom and there is no way he could have hit me from outside when I was in the bedroom.

**Q:** Was there any other time when he hurt you?

**A:** Wait a minute! I just remembered! Right after we started dating - we'd been going out a few weeks - we'd been at a bar with a lot of friends. This was July 4 - three years ago. As we were leaving, we were in the parking lot, everyone started talking and arguing. Someone asked Tom what it was like to date Charles' woman and Tom got really mad and pushed me, pushed me hard. I fell.

**Q:** What happened after that?

**A:** Nothing, really. Mike, one of my friends, took me home. I didn't call the police or anything like that.

**Q:** Tom was convicted for both the September 2002 assault on Sara and the February 2003 assault on you, right?

**A:** Yes.

**Q:** But he wasn't charged or convicted for what happened on July 4, 2001, in the parking lot?

**A:** That's right.

**Q:** Can you add anything else to what you have told me?

**A:** No, except that this has been so horrible. I'm scared for Sara and I guess, I'm scared for me, too.