IN THE SUPREME COURT OF MISSISSIPPI

LISA JO CHAMBERLIN, *Appellant*

versus **NO. 2006-DP-01489-SCT**

STATE OF MISSISSIPPI, *Appellee*

BRIEF OF APPELLEE

STATEMENT OF THE CASE

This case arises from two homicides that occurred on March 20, 2004. On that date, Linda Heintzelman ("Heintzelman") and Vernon Hulett ("Hulett") were murdered at their home in Forrest County, Mississippi. On September 30, 2004, Lisa Jo Chamberlin ("Appellant") was indicted, along with her co-defendant Roger Lee Gillett ("Gillett") for the capital murders of Heintzelman and Hulett pursuant to Miss. Code Ann. 97-3-19(2)(e). C.P. 18-19. They were charged with murdering the victims while engaged in the commission of robbery. *Id.*

Prior to trial, the court granted Appellant's motions to sever, C.P. 89-90; motion to change venue, C.P. 210; and a request for expert psychologist, C.P. 99-100.

After jury selection in Warren County, by way of the change of venue, the jury panel was transported to Forrest County, Mississippi for the trial. The trial commenced on August

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IN THE SUPREME COURT OF MISSISSIPPI

LISA JO CHAMBERLIN, *Appellant*

versus **NO. 2002-DP-00615-SCT**

STATE OF MISSISSIPPI, *Appellee*

BRIEF OF APPELLEE

STATEMENT OF THE CASE

This case arises from two homicides that occurred on March 20, 2004. On that date, Linda Heintzelman ("Heintzelman") and Vernon Hulett ("Hulett") were murdered at their home in Forrest County, Mississippi. On September 30, 2004, Lisa Jo Chamberlin ("Appellant") was indicted, along with her co-defendant Roger Lee Gillett ("Gillett") for the capital murders of Heintzelman and Hulett pursuant to Miss. Code Ann. 97-3-19(2)(e). C.P. 18-19. They were charged with murdering the victims while engaged in the commission of robbery. *Id.*

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After jury selection in Warren County, by way of the change of venue, the jury panel was transported to Forrest County, Mississippi for the trial. The trial commenced on August

2, 2006, and continued until its conclusion on August 4, 2006. Appellant was found guilty of two counts of capital murder. A sentencing hearing was then conducted, after which, on August 4, 2006, the jury returned the following:

COUNT I

We, the jury, unanimously find from the evidence beyond a reasonable doubt that the following facts existed at the time of the commission of Capital Murder;

1) That the Defendant actually killed Linda Heintzelman

2) That the Defendant attempted to kill Linda Heintzelman

3) That the Defendant intended the killing of Linda Heintzelman to take place and

4) That the Defendant contemplated that lethal force would be used.

Next, we the jury, unanimously find the aggravating circumstances of:

1) The capital offense was committed while the defendant was engaged, or was an accomplice in the commission of, or an attempt, or flight after committing a robbery,

2) The capital offense was especially heinous, atrocious or cruel,

3) The capital offense was committed for the purpose of avoiding or preventing a lawful arrest.

are sufficient to impose the death penalty and that there are insufficient mitigating circumstances to outweigh the aggravating circumstances and we further find that the Defendant should suffer death.

Kenneth M. Black
Foreman of the Jury

and

COUNT II

We, the jury, unanimously find from the evidence beyond a reasonable doubt that the following facts existed at the time of the commission of Capital Murder;

1) That the Defendant intended the killing of Vernon Hullett take place

2) That the Defendant contemplated that lethal force would be used.

Next, we the jury, unanimously find the aggravating circumstances of:

1) The capital offense was committed while the defendant was engaged, or was an accomplice in the commission of, or an attempt, or flight after committing a robbery,

2) The capital offense was especially heinous, atrocious or cruel,

3) The capital offense was committed for the purpose of avoiding or preventing a lawful arrest.

are sufficient to impose the death penalty and that there are insufficient mitigating circumstances to outweigh the aggravating circumstances and we further find that the Defendant should suffer death.

Kenneth M. Black
Foreman of the Jury

C.P. 347-48.

On August 8, 2007, Appellant filed a post-trial "Motion for Judgment Notwithstanding the Verdict, or, in the Alternative, Motion For a New Trial." C.P. 353-56. On August 25, 2006, the court denied the Appellant's motion. C.P. 388. The Appellant,

Lisa Jo Chamberlin appeals, *in forma pauperis*, represented by her trial attorneys, and raises the following assignments of error for consideration by this Court:

I. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS STATEMENTS.

II. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS EVIDENCE.

III. THE TRIAL COURT ERRED IN DENYING APPELLANT'S *BATSON* CHALLENGE.

IV. THE TRIAL COURT ERRED IN ALLOWING THE INTRODUCTION OF NUMEROUS GRUESOME PHOTOGRAPHS OF DECEDENTS.

V. THE TRIAL COURT ERRED IN DENYING SENTENCING INSTRUCTIONS NOS. D-3 AND D-10.

VI. THE TRIAL COURT ERRED IN DENYING APPELLANT'S PETITION FOR PAYMENT OF TRAVEL AND RELATED EXPENSES FOR MITIGATION WITNESSES.

As the following analysis demonstrates, each of the issues raised on appeal is without legal merit. Accordingly, Appellant's conviction and sentence should be affirmed.

STATEMENT OF FACTS

On March 29, 2004, members of the Russell County Kansas Sheriff's Department descended upon a farm located within their jurisdiction and executed a search warrant involving drug activity at that location. Tr. 549, State's Exhibit 50. During the course of the search the deputies entered a shed located on the property and discovered a freezer. Tr. 551. When the freezer was opened, the deputies were confronted with the remains of a

human body wrapped in a blanket. Tr. 554. At that time the search ceased and the deputies obtained a second search warrant based on the grisly remains they had discovered in the freezer. Tr. 554-555. As searching resumed, the body of a male subject, Vernon Hulett, was removed from the freezer only to reveal a second body beneath, that of a female, Linda Hientzelman. Tr. 556. It was required that Hientzelman's body be thawed before extrication from the freezer was possible and her body as well as Hulett's could be transported to a morgue in Topeka, Kansas for autopsies. Tr. 605.

Chamberlin and Gillette, had been taken into custody at about the same time the original search warrant was being served. Chamberlin was interviewed at the sheriff's office regarding the drug allegations only, as the interviewing officer had yet to be informed about the discovery of the two bodies. The brief encounter was videotaped and Chamberlin was advised of her Miranda rights which she acknowledged by her signature and initials. Tr. 620, State's Exhibits 58, 61. Chamberlin informed the officer she did not wish to make a statement and the interview ended. State's Exhibit 58.

The next morning, on March 30, 2004, at about 9:30 a.m., officers initiated a second interview with Chamberlin regarding the bodies of Heinztleman and Hulett, discovered the day before. The interview was not videotaped at Chamberlin's request, however another Miranda warning was given and acknowledged by the Appellant by signature and initials. Tr. 630, State's Exhibit 62. Chamberlin agreed to make a statement to agents of the Kansas Bureau of Investigation (KBI) and told them of how she had traveled to Mississippi with

Gillette and lived with the victims. She informed them she had become angry and decided to leave the state. She had hitchhiked a distance from Hattiesburg before changing her mind and hitched a ride back. Upon her return she claimed that both victims were already dead and that she did not participate in the killings. Tr. 635. She further related information about how the bodies were moved, placed in the freezer, put in the truck and transported to Kansas. Tr. 661.

Again on March 30, at about 1:25 p.m., the KBI agents again interviewed Chamberlin and received her permission to videotape her statement. State's Exhibit 59. Her Miranda rights were again gone over and she again acknowledged her understanding of those rights. Tr. 664. Later that day, the agents again approached Chamberlin for a follow-up on some issues and she again made clear she was aware of her rights under Miranda by acknowledgment of the rights upon review of the rights form used by the agents at the two preceding interviews. Tr. 668. At that time she gave a non-chronological account of the events of coming to Mississippi, her leaving and returning to Hattiesburg by hitchhiking, returning to the house where the murders took place and ultimately loading the bodies into the freezer and truck for the drive to Kansas. Tr. 671. The agents then asked Chamberlin to tell her story in an orderly, chronological sequence and she complied. Tr. 686. At that time Chamberlin provided the officers with a detailed account of the killings. State's Exhibit 64.

The agents returned to the jail on the morning of March 31, where they were informed that Chamberlin was requesting to speak to them. Once again, Chamberlin was advised of her Miranda rights and she knowingly waived those rights and allowed the interview to be videotaped. State's Exhibit 60. At that point, Chamberlin calmly recounted the gruesome details that she had advised the officers of the day before, of the pain and injuries inflicted upon the victims before they were ultimately murdered by her hands and those of her co-defendant, Gillette. *Id.*

Chamberlin recounted for the officers the events that led up to the discovery of the victims in the freezer. Chamberlin reported that Hulett and Gillette had gotten into a fight and that left the house and began hitchhiking, eventually ending up at a truck stop. She was unable to get a ride and decided to return to the house. Chamberlin was picked up by a man, who offered her money in exchange for performing sex acts, she refused and he eventually dropped her off and she walked back to the house. Chamberlin said her intent was to gather her belongings and leave again. Upon arrival at the house she stated that everyone was arguing and fighting. The argument appeared to stem from an earlier car wreck where Chamberlin felt that Heintzelman was not dealing truthfully with her or the insurance company.

Chamberlin wanted to load up and leave at that time. Gillette wanted to leave the next day. While in the kitchen Chamberlin reports that Hulett grabbed her and then Gillett slammed Heintzelman into the counter. A brawl ensued. Gillett instructed Chamberlin to

retrieve a gun that was located under the mattress in the bedroom. She did get the gun and hand it to Gillett. At that time, Chamberlin decided to pull out the telephone lines of the house but, discovered that Gillett had already cut the lines. Gillett ordered Heintzelman to give him the keys to the truck and fired a round from the gun into the floor. No one was hit by the bullet. Chamberlin then took the gun, went outside and attempted to shoot the tires of the truck. Gillett instructed her to not shoot the tires of their "getaway car".

Gillette struck Hullett several times and Chamberlin was instructed to help Heintzelman get a safe that was located on a closet shelf. At that time, Chamberlin reports she just wanted to burn the house down and leave. She went so far as to light a gas heater in the room before Gillett turned it off. Heintzelman was forced to carry the safe to the living room and was told to open it. Heintzelman said she did not know the combination but, eventually told them the combination was "37-17-80". Despite repeatedly trying, Heintzelman was unable to open the safe.

At about 1:30 a.m., a battered Hulett who had been sitting in a chair in the living room, went to lie down in the bedroom. Chamberlin reports she wanted some beer and drove away in the truck with the intent to find a place to buy beer. Chamberlin reports that she picked up an unidentified female that would take her to a "bootlegger" to purchase beer but they are unsuccessful and she returned to the house.

Upon arrival back at the house Chamberlin finds Hulett to be in the bedroom and Heintzelman is bent over the safe with no pants. Gillett stated that he had found two beers

under the overturned refrigerator; overturned in the earlier fight in the kitchen by Chamberlin. Upon questioning by Chamberlin, Gillett stated that he had forced Heintzelman to take her clothes off in order to "break her". He also denied having placed his penis inside of her but, said he had used a "cobra beer bottle". Hulett came into the room and told Heintzelman not to open the safe. It was at that time Chamberlin made the statement that they should kill them and get it over with.

Gillett then told Chamberlin to get a knife from the tool room. She came back in and Hulett sat down in a chair whereupon Gillett hit him in the head with a hammer. The two further discussed killing the victims and Chamberlin attempted to choke Heintzelman but was unable to kill her that way. Chamberlin then retrieved a knife from the kitchen and Gillett used it to stab Heintzelman. Chamberlin went outside for about five minutes and when she reentered the house she saw Hulett's throat cut and Heintzelman on the floor. The two then left the house in the truck and drove for between one and two hours before they decided to return to the house and finish what had been started..

On returning to the house Hientzelman was still on the floor and still alive. They covered both the victims with blankets. Chamberlin was unable to sleep in the bedroom and went outside to sleep in the car. Her reasoning was that if the police came she would tell them she had not seen anything. Around 3 hours later, she went back in the house and Heintzleman was still on the floor and Gillett was on the sofa. Chamberlin decided that Hientzelman was nearly dead and she suggested they suffocate her. Heintzleman's hands

were bound behind her back with duct tape to prevent her struggling. As Gillett held Heintzelman's head, Chamberlin placed the bag over it, helped by Gillett. Chamberlin reports that a short time later Hientzelman was dead.

Later, after the murders were complete, Chamberlin and Gillett actually anticipated the arrival of "the boys", Hulett's relatives, at the house later that day and determined that it would be a good alibi to have spent time fishing with them, which is exactly what they did. They returned to the house and decided to stay one more night. They decided they would clean the house and that the head and hands of the victim would be removed.

Chamberlin described how Hulett's body was in the tub, Gillett was over him and she heard the sounds of the saw on the body. Chamberlin and Gillett both became sick and vomited during the dismembering process. Chamberlin held open garbage bags for Gillett to place the body parts in. The two laid the freezer on its side and then placed the two bodies inside. The freezer then was sealed with electrical and duct tape and was eventually placed in the back of the truck, along with other items from the house related to the murders, that had been placed in garbage bags for transport. They then drove to Kansas. The two planned to hide the bodies and bags in Kansas and that Gillett would return to Hattiesburg and burn the house down.

Chamberlin recalled that seven garbage bags in all had been brought from Hattiesburg and they had been taken to a landfill in Russell County, Kansas and discarded. The freezer was left at the storehouse on the farmstead where the deputies had located it during the drug

It is well settled law that the Appellant was not entitled to a mercy instruction during the sentencing phase of the trial.

While the Appellant did file a motion to request funds for travel and lodging expenses for two witnesses, she failed to obtain a ruling on the motion prior to trial.

LEGAL ANALYSIS

I & II. THE TRIAL COURT PROPERLY DENIED APPELLANT'S MOTIONS TO SUPPRESS STATEMENTS AND TO SUPPRESS EVIDENCE.

The Appellant contends the trial court erred in ruling that her statements to law enforcement were admissible as evidence at trial. In a pre-trial motion to suppress the statements, the Appellant asserted that she had invoked the right to counsel, that she was under emotional stress at the time and that fellow inmates scheduled to testify at her trial were acting as agents of the State. C.P. 174-76.

The trial court conducted a hearing prior to trial and after hearing testimony produced the following Order, which reads in relevant part:

> [F]ive statements at issue were obtained by the Kansas Bureau of Investigation (KBI), Russell, Kansas, over the course of three days, beginning on March 29, 2004, at 5:15 p.m. Other statements were made on March 30, 2004, at 9:30 a.m.; March30, 2004, at 1:24 p.m.; March 30, 2004, at 2:45 p.m.; and, ended with statements contained on video on March 31, 2004, at 9:43 a.m. It should be noted that KBI investigators began their initial questioning of Chamberlain after her arrest on five (5) felony drug charges originating from Russell County, Kansas. Thus, the content of the first interview was limited solely to the Kansas felony drug charges. Videotape of the interviews reflects that Chamberlin's *Miranda* rights were meticulously observed by KBI Investigator Matthew Lyon and clearly shows that Lisa Chamberlin

intelligentlt, knowingly, and voluntarily waived her rights at the beginning of the video interview. *See Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct 1602, 16 L.Ed2d 694 (1966).

However, during the course of providing these five separate statements, counsel for Chamberlin argued that several issues arose that require suppression of statements obtained during the course of those interviews.

Issue 1. **Chamberlin's ambiguous request for a lawyer**

The first issue was prompted by Lisa Chamberlin asking the KBI Investigator, "Is this where I am supposed to ask for an attorney?"; and, later stating, "Don't you think I need a Lawyer?"

It is well established law that if the right to remain silent is invoked, the interrogation must cease; or, if the right to have an attorney present is invoked, the interrogation must cease until one is present. *Edwards v. Arizona*, 451 U.S. 477, 484-85, 101 S.Ct 1880, 1880, 68 L.Ed.2d 378, 386 (1981). Under either circumstance, interrogation may commence or resume in the absence of an attorney if the defendant: (1) initiated further discussions with the police; and (2) knowingly, intelligently and voluntarily waived the right previously invoked. *Smith v. Illinois*, 469 U.S. 91, 95, 105 S.Ct. 490, 492, 83 L.Ed.2d 488, 493-94 (1984). The right to have an attorney present must be "specifically invoked." *Edwards*, 451 U.S. at 482, 101 S.Ct. At 1884, 68 L.Ed.2d at 385.

If a defendant makes equivical or ambiguous utterances which could be interpreted as an invocation, then the interrogator is permitted to inquire further with regard to clarifying any ambiguous utterances. *Berry v. State*, 575 So.2d 1, 5-8 (Miss.1990). In *Holland v. State*, 587 So.2d 848 (1991), the Defendant argued that his statement "Don't you think I need a lawyer," constituted an unambiguous request for an attorney; and therefore the interrogation should have ceased except for conversation to clarify. The Mississippi Supreme Court first held that this statement (identical to Chamberlin's herein) was "not only to be characterized as ambiguous-not only as a matter of law-but also as a matter of definition". Like Chamberlin, Holland was again advised him of his right to an attorney and that he did not have to talk if he did not want. Again, like Chamberlin, Holland responded signifying that he wised to continue the conversation with authorities.

When Chamberlin questioned KBI investigator Matthew Lynon by asking, "Is this where I'm supposed to ask for a lawyer"; and "Don't you think I need a lawyer?", Lyon responded properly. Lyon immediately focused on the ambiguous situation and stopped his interrogation until Chamberlin clearly waived her right to an attorney. Lyon responded by clarifying the ambiguous situation created by the aforesaid comments. After a brief exchange, Chamberlin said, "I'll talk". *Miranda* rights were carefully read and clearly acknowledged on the video and on the written *Miranda* form. A brief conversation was held between the parties which dealt with the five Kansas felony drug charges. Near the end of that interview, Chamberlin said, "I don't want to answer any questions." Lyon properly ceased the interview and the whole matter was concluded by 6:00 p.m., March 29, 2004.

Counsel for Chamberlin argued that certain statements she made at or about 1:24 p.m. on March 30, 2004, invoked her *Miranda* right to silence. Chamberlin made several statements to investigators, including "I can't," "I should keep my mouth shut," "I can't say no more," and "I'm done." Chamberlin also made contemporaneousstatements such as "I'm here," "if I can get the strength," and "Ican't look anybody in the eye for this." Investigators, looking at the totality of circumstances, concluded that Chamberlin's statements clearly indicated that she was expressing shame and remorse rather than a request to remain silent. Out of an abundance of caution, that particular interview was concluded. Questioning ceased for over an hour whereupon inquiry was made as to whether or not she was willing to continue to speak to the officers. Chamberlin agreed and the interview begain again at approximately 2:45 p.m. Additionally, the Court notes that Chamberlin initiated the final interview by sending a message through the jailer that she wished to speak to the authorities again. The interview of march 31, 2004, was the result of her request.

The Court finds the Defendant Chamberlin's rights were sufficiently safeguarded during this colloquy and that all statements made therein were made after intelligently, knowingly, and voluntarily waiving her rights. Further, the Court finds that her questions concerning an attorney were ambiguous as a matter of law and that investigators took all appropriate precautions to determine the nature and extent of the ambiguity, and that the defendant voluntarily and without coercion agreed to proceed and further answer questions.

Issue 2. **Whether Chamberlin's request for a lawyer would "carry-over" to a Subsequent interview concerning an unrelated felony offense**

Questioning of Lisa Chamberlin did not resume until approximately 15½ hours later, at 9:30 a.m. on March 30, 2004, by KBI Investigators Matthew Lyon and Delbert Hawel. Upon resumption of questioning, investigators only posed questions concerning the homicides from Mississippi; no questions regarding the previously mentioned Kansas felony drug charges were broached. Although this Court has found that Chamberlin's request for counsel was ambiguous, the Court notes that the Sixth Amendment right to counsel attaches only to the charged offense that is the subject matter of the conversation, *Texas v. Cobb*, 121 S.Ct 1335 (2001). In *McNeil v. Wisconsin*, 111 S.Ct.2204 (1991), the United States Supreme Court held that the Sixth Amendment right to counsel is offense specific and cannot be invoked once for all future prosecutions. Chamberlin was initially questioned about the felony drug charges. During that questioning, she made mention of an attorney. Even if this Court found that her request for counsel was unambiguous and properly invoked as to her drug charges (which were in no way related to the Mississippi homicide charges), said invocation would not apply to the questioning and statements concerning the Mississippi homicide charges which were the result of a separate interview 15½ hours later. The Court finds that Defendant Chamberlin's rights were sufficiently safeguarded during this colloquy and that all statements made therein were made after intelligently, knowingly, and voluntarily waiving her rights. Further, the Court finds that her questions concerning an attorney in the initial interview were ambiguous as a matter of law and did not in any way affect the statements given in separate interviews on completely unrelated charges.

Issue 3. **Chamberlin's privilege against self incrimination**

During subsequent interviews, Chamberlin made what her defense counsel characterized as incriminating statements and asked that this Court disallow their use at trial. Chamberlin asserts that her refusal to answer any further questions at the cessation of the initial interview regarding her drug charges invokes her *Miranda* rights in a plenary manner, thus disallowing further questioning of her on any subject, specifically the Mississippi homicides. The Court makes note of the United States Supreme Court decision *Michigan v. Mosley*, 96 S.Ct. 321 (1975) and applies its holding here. Mosley was arrested on a robbery charge in Detroit, Michigan. After proper *Miranda* warnings were issued, Defendant Mosley refused to discuss the charges and questioning ceased. Approximately 2 hours later, Mosley was

again confronted by law enforcement, read his *Miranda* rights, and asked about a fatal shooting that was unrelated to the robbery charge for which he was arrested. At no point during the second interview did Mosley refuse to answer questions, nor did he request a lawyer.

The Supreme Court in *Mosley* said, "The resolution of the question turns almost entirely on the interpretation of a single passage in the Miranda opinion "... **once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease.**" (Emphasis added). The *Mosley* Court pointed out that is this passage from *Miranda* were to be literally read, then a suspect, "can never again be subjected to custodial interrogation by any police officer at any time or place on any subject." The *Mosley* Court determined the other end of the spectrum, "could be interpreted to require only the immediate cessation of questioning, and to permit a resumption of interrogation after a momentary respite."

The *Mosley* Court held that common sense dictated that neither extreme was intended by the Miranda decision and found as follows: "The critical safeguard identified in the passage at issue is a person's right to cut off questioning. Through the exercise of his option to terminate questioning he can control the time at which questioning occurs, the subjects discussed, and the duration of the interrogation. The requirement that law enforcement authorities must respect a person's exercise of that option counteracts the coercive pressure of the custodial setting. We therefore conclude that the admissibility of statements obtained after the person in custody has decided to remain silent depends under Miranda on whether **his right to cut off questioning was scrupulously honored.**" (Emphasis added).

In considering this case, the Supreme Court in *Mosley* found the following circumstances important: Mosley's right to cut off questioning was fully respected; Mosley was carefully advised that he was under no obligation to answer any questions and could remain silent; Mosley orally acknowledged that he understood the Miranda warnings and signed the form at the first interview; when Mosley stated he did not wish to discuss the robberies, the interrogation ceased; after an interval of 2 hours, Mosley was questioned about an unrelated homicide; Mosley was again given Miranda warnings at the outset of the second interview; and, no inquiry was attempted regarding the robbery charges.

In reviewing those same factors in light of the facts of the case at bar, this Court finds that: Chamberlin's right to cut off questioning in the first interview was fully respected; Chamberlin was carefully advised that she was under no obligation to answer any questions and could remain silent; Chamberlin orally acknowledged that she understood the *Miranda* warnings and the signed the form at the first interview; when Chamberlin stated she did not want to answer any questions regarding the drug accusations, the interrogation ceased; after and interval of approximately 15½ hours, Chamberlin was questioned about unrelated homicides; Chamberlin was again given her *Miranda* warnings at the outset of the interview; and, no inquiry was attempted regarding the drug charges originating in Kansas.

The State having met the "*Mosley* Guidelines"(viewed with approval by the Mississippi Supreme Court in *Mohr v. State*, 584 So.2d 426 (1991), but not adopted due to ripeness issues), the Court finds that statements derived from the second through fourth interviews with Lisa Chamberlin are admissible. Issues focused on the legality of the second through fourth interviews being conducted at all are reserved for later ruling.

Issue 4. **Statement Chamberlin gave to fellow inmates**

Chamberlin made several oral statements to Martha Petrofsky Rivers and Marilyn Coleman while all three were incarcerated together in the Forrest County, Mississippi jail. Chamberlin has not brought forth any evidence to support her allegations that Rivers and/or Coleman were agents of the State placed in her cell block to obtain statements. Further, there is no evidence to suggest that either woman was paid any money or received any plea deals from the State. Our Supreme Court has held that the absence of any testimony that a witness hoped to gain favor with the State or did in fact gain favor with the State should make their testimony admissible. *Dycus v. State*, 44 So.2d 246 (1983); *Carr v. State*, 655 So.2d 824 (1995); *Brown v. State,* 682 So.2d 824 (1996).

The Court finds the Motion in Limine is not well taken the relief requested therein is thereby DENIED.

C.P. 237-43.

The trial court relied upon clearly established law in finding the statements admissible as the Appellant knowingly, intelligently and voluntarily waived her right to remain silent.

In this direct appeal, the Appellant does not offer any argument that she invoked her right to counsel as she did pre-trial. Now Chamberlin only claims to have invoked her right to remain silent. At Chamberlin's first interview with law enforcement on March 29, at about 5:15 p.m., she was advised of her *Miranda* rights and acknowledged her understanding of them. *See* State's Exhibit 58. Chamberlin was briefly questioned at that time only about the Kansas drug related charges and she did tell the officer she did not wish to make a statement. *Id.*

The next morning on March 30, at about 9:30 a.m., after discovery of the victim's bodies in the freezer, law enforcement officers initiated a second interview of Chamberlin. The officers again advised Appellant of her *Miranda* rights and obtained her initials and signature on the document. *See* State's Exhibit 62. No questions were asked regarding the drug related charges involving Chamberlin but, were directed toward the investigation of the murder victims found in the freezer. Chamberlin agreed to make a statement to the KBI officers and told them of how she came to be in Mississippi and living with the victims. The interview was not video recorded at Chamberlin's request however, the officers did take notes and produced a written report of the interview. *See* State's Exhibit 63.

This second interview was proper in every respect as the officers abided by the requirements found in *Michigan v. Mosley*, 96 S.Ct 321 (1975). The analysis offered by the

trial court, *supra*, gives an excellent interpretation of the holding in *Mosley* as it applies to this case at bar. The only argument put forth by the Appellant to claim that Mosley does not apply is that the officer in the first interview did not "scrupulously" observe Miranda. This claim appears to be based on the fact that the officer stated to Chamberlin that her co-defendant had "put it all on her" regarding the drug charges. *See* State's Exhibit 58. As depicted in the video and ruled upon by the trial court, the officer meticulously observed the rights of the Appellant at all times.

The third and fourth interviews were conducted later that afternoon on March 30 at 1:24p.m. and 2:45 p.m. The interview at 1:24 was videotaped and shows a nervous Chamberlin telling of her and her co-defendants actions regarding the murders of Ms. Hientzelman and Mr. Hulett. *See* State's Exhibit 59. Again, Chamberlin's Miranda rights were scrupulously observed and again there was no invocation of a right to remain silent or for the services of an attorney *Id.* As Chamberlin had not put her statement in a chronological order during the third interview, she was approached for the 2:45 interview with a request to do just that, to tell her statement into a sensible chronological fashion and she willingly complied. Tr. 685-86.

The final interview conducted on March 31, 2004, at about 9:43 a.m. came about as a request from Chamberlin herself. The evening before, on March 30, the KBI officers had already left for the night and Chamberlin requested of Undersheriff Max Barrett to inform the officers that she wished to speak with them. Tr. 533-34. Barrett conveyed the request

to the KBI officers and they again met with her. At that fifth interview Chamberlin was once again Mirandized and again acknowledged her understanding of her rights and her desire to make a statement. *See* State's Exhibit 60. It was at that point that Chamberlin calmly detailed the murders of Hientzlman and Hulette and her direct participation in the cruel and prolonged suffering experienced by the victims before they finally died by her hands and those of her co-defendant. *Id.*

For the first time, in this direct appeal, the Appellant contends the trial court erred in not granting the motion to suppress because Undersheriff Barrett did not testify at the pre-trial hearing regarding the motion. The Appellant contends *Agee v. State*, 185 So.2d 671 (Miss.1966), requires the testimony of all witnesses present at the confession ***when a defendant testifies that the confession was not voluntary.*** This is a case of putting the horse before the cart in that the Appellant ***never*** offered testimony that any of her statements were involuntary. Chamberlin did not testify nor did any other person testify for the defense at the suppression hearing as the defense rested immediately after the State concluded it's presentation. Tr. 142 .

As this Court recently held regarding the voluntariness of a confession:

> ¶ 26. The State has the burden of proving the voluntariness of a confession. *Agee v. State*, 185 So.2d 671, 673 (Miss.1966). This burden is met by the testimony of an officer, or other person, having knowledge of the facts, that the confession was voluntarily made without any threats, coercion, or offer of reward. *Morgan v. State,* 681 So.2d 82, 89 (Miss.1996) (citing *Agee*, 185 So.2d at 673). This creates a prima facie case for the State on the question of voluntariness. *Id.* When objection is made to the introduction of the confession, the accused is entitled to a preliminary hearing on the question of

> the admissibility of the confession, which is conducted in the absence of the jury. *Id.* After the State has made out a prima facie case as to the voluntariness of the confession, if "the accused offers testimony that violence, threats of violence, or offers of reward induced the confession, then the State must offer all the officers who were present when the accused was questioned and when the confession was signed, or give an adequate reason for the absence of any such witness." Id. (citing *Lee v. State*, 236 Miss. 716, 112 So.2d 254 (1959)). We also have held that "the resolution of conflicting testimony regarding voluntariness is a question of fact to be resolved by the trial judge at the suppression hearing." Id. (quoting *Chase v. State*, 645 So.2d 829, 841 (Miss.1994)); *see also Veal v. State*, 585 So.2d 693, 697 (Miss.1991) (this Court will not reverse trial court on conflicting testimony as to whether coercion used to obtain confession).

Bell v. State, — So.2d —, 2007 WL 2051365 (Miss.2007).

The Appellant also contends that certain exhibits should have been barred from introduction into evidence based upon the argument that since the Appellant's statements, discussed *supra* in the first issue, should have been suppressed as improperly obtained, that the items should have been suppressed based on the concept of "fruit of the poisonous tree".

Chamberlin filed a pre-trial motion regarding her desire to have the items recovered from the landfill in Kansas, State's Exhibits 2, 3, 4, 5, 35 - 44, suppressed, however she declined to argue the issue when it was brought before the court prior to the trial. C.P. 172-73, Tr. 155. At trial, Chamberlin did reference the motion in her argument to have the evidence excluded when it was presented as evidence. Tr. 525.

The only argument forwarded by the Appellant on this issue is that the search of the landfill was a result of the statements made by Chamberlin on March 30, 2004. As discussed above, the statements made by Chamberlin were all knowingly, intelligently and voluntarily

made to law enforcement and the officers properly initiated contact with Chamberlin on that date. As Chamberlin's rights were meticulously observed at all times, pursuant to *Edwards v. Arizona*, 451 U.S. 477 (1981), *Miranda v. Arizona*, 384 U.S. 436 (1966), *Michigan v. Mosley*, 423 U.S. 96 (1975), and *Agee v. State*, 185 So.2d 671 (Miss.1966), there is no basis for the exclusion of lawfully obtained evidence from the landfill. This issue is without merit and no relief for the Appellant should be granted.

III. THE TRIAL COURT CORRECTLY FOUND NO *BATSON* VIOLATION.

Seven of the State's twelve peremptory challenges involved the striking of African American veniremen. One other African American was struck by the State in the selection of the alternate jurors. The Appellant complained to the court that the strikes were in violation of the precepts of *Batson v. Kentucky*, 476 U.S. 79 (1986) (prohibiting the exercise of discriminatory peremptory challenges based solely on race).

The trial court did not find that Chamberlin had presented a prima facie case of discrimination. However, the State volunteered its race-neutral reasons, which were accepted by the trial court.

This Court's standard for reviewing *Batson* questions in this situation is well-settled:

> The proper analysis for a violation pursuant to *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.ed.2d 69 (1986) has been set forth by this Court in numerous cases. *See Berry v. State*, 728 So.2d 568 (Miss.1999); *Randall v. State*, 716 So.2d 584 (Miss.1998); *McFarland v. State*, 707 So.2d 166 (Miss.1998). The United States Supreme Court in *Henandez v. New York*, 500 U.S. 352, 111 S.Ct. 1859, 114 L.Ed2d 395 (1991) provided *Batson* requires that:

> The defendant must make a prima facie showing that the prosecutor has exercised peremptory challenges on the basis of race. Second, if the requisite showing has been made, the burden shifts to the prosecutor to articulate a race-neutral explanation for striking the jurors in question. Finally, the trial court must determine whether the defendant has carried his burden of proving purposeful discrimination.

The trial court's decision is accorded great deference on review and this Court will reverse only where the decision is clearly erroneous. *Randall v. State,* 716 So.2d at 587; *Collins v. State*, 691 So.2d 918, 926 (Miss.1997). In establishing the necessary prima facie showing of discrimination a defendant must demonstrate:

> (1) that he is a member of a cognizable racial group; (2) that the prosecutor has exercised peremptory challenges to remove from the venire member's of the defendant's race; (3) and the facts and circumstances raised an inference that the prosecutor used his peremptory challenges for the purpose of striking minorities.

Walker, 740 So.2d at 879.

> Although the trial court did not explicitly rule whether [the appellant] established a *Batson* prima facie case, the trial court required the State to provide race-neutral reasons for its challenges and because the State provided explanations for its challenges, the issue of whether [the appellant] established a prima facie case and whether the State should be required to give race-neutral reasons for its challenges is moot. *Mack*, 650 So.2d at 1297 (citing *Hernandez*, 500 U.S. 352-54, 111 S.Ct 1859, 114 L.Ed.2d 395).

Snow v. State, 800 So.2d 472, 478 (Miss.2001)(affirming trial court's ruling that reasons were race-neutral, where the State used eight peremptory challenges, all to strike black members of the venire).

Therefore,

> ... the "next step is to determine whether the prosecution met its burden of showing sufficient race-neutral explanations for its strikes." *Woodward*, 726

> So.2d at 529-30. "A peremptory challenge does not have to be supported by the same degree of justification required for a challenge for cause." *Stewart v. State*, 662 So.2d at 558. It is not necessary to meet the same standard of examination as a challenge for cause for a peremptory challenge. Id.

Steven v. State, 806 So.2d 1031, 1046 (Miss.2001).

Indeed, the standard for reviewing such questions is highly deferential:

> This Court accords great deference to the trial court in determining whether the offered explanation under the unique circumstances of the case is truly a race-neutral reason. *Stewart*, 662 So.2d at 558. This Court will not reverse a trial judge's factual finding on this issue "unless they appear clearly erroneous or against the overwhelming weight of the evidence." *Id.* (quoting *Lockett v. State*, 517 So.2d 1346, 1350 (Miss.1987)). One of the reasons for this is because the demeanor of the attorney using the strike is often the best evidence on the issue of race-neutrality. *Id.* at 559 (citing *Hernandez v. New York*, 500 U.S. 352, 365, 111 S.Ct. 1859, 114 L.Ed.2d 395 (1991)).

Finley v. State, 725 So.2d 226, 240 (Miss.1998).

As stated previously, Chamberlin raises objections to the State's peremptory challenges of eight jurors (5, 38, 81, 92, 104, 106, 117 and 229) for consideration under this standard of review. With regard to jurors 5, 38, 81 and 92, the defense did not attempt to refute the reasons offered by the State regarding their strikes. Accordingly, this issue is procedurally barred as to those jurors, 5, 38, 81 and 92. *See Manning v. State*, 735 So.2d 323, 339 (Miss.1999) ("'It is incumbent upon a defendant claiming that proffered reasons are pretextual to raise the argument before the trial court. The failure to do so constitutes waiver.'")(citing *Mack v. State*, 650 So.2d1289, 1297 (Miss.1994)); *Manning v. State*, 726 So.2d 1152, 1182 (Miss. 1998) ("First, Manning is procedurally barred from asserting this claim . . . for failure to rebut the prosecutor's reason for the strike as pretexual."); *Woodward*

v. State, 726 So.2d 524, 533 (Miss.1997) ("In the absence of an actual proffer of evidence by the defendant to rebut the State's neutral explanations, this Court may not reverse on this point.) (citations omitted).

Alternatively, and without waiving any applicable bar, the following analysis clearly demonstrates that the State's use of its peremptory challenges was correct and proper with regard to the remaining prospective jurors.

As to Juror Number 104:

> MR. SAUCIER: No. 104. Answer to question 30, "Are you emotionally capable of standing up in court and announcing your verdict?" Not sure. "Would you hold the State to a greater burden," on question 34. Not sure. Question No. 35, "Would you want to be a hundred percent certain?" Yes. I believe that's it on that one.

Tr. 402-03. *See* Supplemental Record (S-R) at 1609-19.

As to Juror Number 106:

> MR. SAUCIER: No. 106 I believe is our next one. 106 to question 30, not sure she's capable emotionally of rendering a verdict. Not sure. That she would hold the State to a greater burden.
>
> THE COURT: I think 106 is a he.
>
> MR. SAUCIER: Oh, he. I'm sorry. No. 34, not sure whether they would hold us to a greater burden. Question No. 35, would require a hundred percent certainty. I believe that's it on that one.

Tr. 403. *See* S-R. 585-95.

As to Juror Number 117:

MR. SAUCIER: No. 117. Question 31, "In all fairness can you set aside your personal opposition or hesitancy to the death penalty and judge the case based on what the judge gives you and the facts and circumstances?" No. Question 34, requires to have a greater burden of proof, not sure.
Question 35, a hundred percent certainty, not sure. And that's all on that one.

Tr. 403-04. *See* S-R. 1146-56.

As to Juror Number 229:

I believe the last one is No. 229. Answered question 28, "Are your beliefs so strong that no matter what the circumstances of the offense were, no matter what the character of the defendant was, you would not be able to vote the death penalty?" She said, yes.
No. 36, "Would you be less likely to find someone guilty if there was the possibility of the death sentence?" Yes.

Tr. 404. *See* S-R. 1697-1707.

The Appellant then briefly attempted to rebut the State's explanations for four of the eight jurors in question:

MR. ADELMAN: [A]s to the reasons which the State has given, there's a couple of jurors I specifically would like to address. 104 in particular is a man who's name is Thomas Sturgis, African American. He was an administer at Alcorn State University. In his questionaire he stated that he generally favors the death penalty.

And in a comment in response to question No. 56 he said, "I am fair and open-minded and have the ability to assimilate information and reach - - or form a conclusion or an opinion." So we would submit that this is a man who, when I first read these questionaires, struck me as being someone who would be a very appropriate juror.

And we would submit as to Juror No. 104 the reasons submitted by the State do not overcome the inference of prejudice.

No. 106. Also, we would note the State struck number 106, Mr. David Minor, someone who we'd point out has a nephew with the highway patrol. The State accepted other jurors with law enforcement connections. His opinion on the death penalty was he had no opinion. And, also, he's worked for the Vicksburg fire department for twenty-eight years.

As to number 117, Gloria Broome, she stated in her questionaire she has no opinion as to the death penalty.

As to Juror No. 229, the alternate juror that was struck, Audrey Brown, she also stated that she had no opinion.

We would submit, Your Honor, on those last four that I read, Mr. Sturgis, Mr. Minor, Gloria Broome, and Audrey Brown, that if you look at the totality of their questionaire, it appears that they could be absolutely open- and fair-minded jurors on the question of the death penalty.

THE COURT: Response?

MR. WEATHERS: None other than what we made except I want the record to be clear, and I think it is, that we submitted Juror No. 76, Stacey Lashawn Carter, who's an African American. They struck her as D-6.

We also submitted Dewain Dixon, Juror No. 201, who happens to be an African American. They used strike D-12.

We also were very happy with Juror No. 215 as an alternate, Patrick Brown. He's an African American, and they struck him. So I think the record is very clear why each side - - or at least the State exercised its challenges.

THE COURT: My ruling stands. Anything further?

Tr. 405-08.

In sum, Chamberlin did not even attempt to rebut any of the reasons given by the State with regard to jurors 5, 38, 81 and 92. She did not rebut all of the reasons for striking jurors 104, 106, 117 and 229. Regarding Appellant's attempt to rebut the reasons given for the strike on juror number 104, the Appellant did not address the State's reasons but instead informed the court that he had stated in his questionnaire that he could be fair, open-minded and generally favored the death penalty. As to jurors106, 117 and 229 her only argument was that each of them marked that they had no opinion of the death penalty. Therefore, the State submits that:

> ... the record clearly indicates that [defense] counsel offered no rebuttal to the State's explanations for its peremptory strikes. In *Bush v. State*, 585 So.2d 1262 (Miss.1991), we stated that if a racially neutral procedurally is offered the defendant can rebut the explanation. *Id.* at 1268. If the defendant makes no rebuttal, the trial judge must base his decision only on the explanations given by the State. *Id.* On appellate review this decision is given great deference, and we will reverse only when such decisions are clearly erroneous. *Lockett v. State*, 517 So.2d 1346, 1349-50 (Miss.1987). Therefore, we review the trial court's ruling on the strikes under a harmless error analysis.

Gary v. State, 760 So.2d 743, 748 (Miss.2000). Chamberlin has failed to demonstrate any error here, harmless or otherwise.

Additionally, as to potential juror number 106, the Appellant attempts to concoct a showing of pretext, by falsely accusing the State of offering as a "primary reason" for the strike that the juror had a nephew with the Mississippi Highway Safety Patrol. The assertion is a complete fabrication on the part of the Appellant. At no time was the issue of Mr. Minor's possible connections to law enforcement brought out by the prosecution as a reason to strike. The Appellant was the only voice of opposition to the seating of law enforcement related jurors. Tr. 383, 384, 385. It was only Chamberlin that brought out Mr. Minor's law enforcement connection in her attempt to rebut the State's explanation for the strike. Tr. 407.

Alternatively, the reasons given for exercising the strikes against the disputed jurors are all within the realm of explanations approved by this Court. Chamberlin does not demonstrate any evidence of discriminatory intent on the part of the State. Therefore, the trial court correctly accepted the reasons given by the State. Based on the foregoing, the

State submits that Chamberlin's argument is , partly procedurally barred as well as without substantive merit.

This is particularly true, given that: (1) this Court's deferential standard of review on this issue, and (2) the fact that the trial court's ruling were supported by the precedent of this Court. "The trial judge witnessed the challenges in court and could observe the demeanor of all involved as well as all other relevant circumstances in this case.... [T]he trial court's findings are not clearly erroneous or against the overwhelming weight of the evidence. Therefore this contention is without merit." *See Stevens*, 806 So.2d at 1048.

IV. THE TRIAL COURT DID NOT ERR IN ALLOWING THE ADMISSION OF PHOTOGRAPHS.

Photographs, whether original or copies, are admissible as primary evidence upon the same grounds and for the same purposes as diagrams, maps and drawings of objects, places or people. *Ledbetter v. State*, 233 So.2d 782, 785 (Miss. 1970) (citing *Willette v. State*, 224 Miss. 829, 80 So.2d 836 (1955)). Photographs that aid in describing the circumstances of a killing, the location of the body and cause of death, or that supplement or clarify a witness's testimony, have evidentiary value and are admissible before a jury. *Neal v. State*, 805 So.2d 520, 523, 524 (Miss. 2002). Photos of murder victims must almost certainly be considered relevant evidence.

Admission of photos of a deceased is within the sound discretion of the trial court, and is proper so long as the photos serve some useful, evidentiary purpose. *Some* probative value is the only requirement needed to buttress a trial judge's decision to allow photos into

evidence. *Jordan v. State*, 728 So.2d 1088, 1094 (Miss. 1998); *Holland v. State,* 705 So.2d 307, 350 (Miss. 1997); *Parker v. State*, 514 So.2d 767, 771 (Miss. 1986). The comment to Rule 401 of the Mississippi Rules of Evidence make clear that, "[i]f the evidence has any probative value at all, the rule favors its admission."

If prejudice slightly outweighs probative value, evidence still must be admitted. "To tip the scale is not enough. The [Rule 403 factors must [...] 'substantially outweigh' probative value before the evidence may be excluded." *Williams v. State*, 543 So. 2d 665, 667 (Miss.1989). The discretion of a trial judge to admit photos in criminal cases, "runs toward almost unlimited admissibility regardless of the gruesomeness, repetitiveness, and extenuation of probative value." *Woodward v. State*, 726 So.2d 524, 535 (Miss. 1997) (quoting *Brown v. State*, 690 So. 2d 276, 289 (Miss. 1996)).

This Court's position as to the admissibility of photographs is well settled:

> In *Westbrook v. State*, 658 So. 2d 847, 849 (Miss. 1995), this Court found that photographs of a victim have evidentiary value when they aid in describing the circumstances of the killing, *Williams v. State*, 354 So. 2d 266 (Miss. 1978); describe the location of the body and cause of death, *Asheley v. State*, 423 So.2d 1311 (Miss. 1982); or supplement or clarify the witness testimony, *Hughes v. State*, 401 So. 2d 1100 (Miss. 1981).
>
> The admissibility of photographs rests within the sound discretion of the trial court. *Jackson v. State,* 672 So. 2d 468, 485 (Miss. 1996); *Griffin v. State*, 557 So. 2d 542, 549 (Miss. 1990); *Mackbee v. State*, 575 So. 2d 16, 31 (Miss. 1990); *Boyd v. State*, 523 So. 2d 1037, 1039 (Miss. 1988). Moreover, the decision of a trial judge will be upheld unless there has been an abuse of discretion. *Westbrook*, 658 So. 2d at 849

Gray v. State, 728 So.2d 36, 57 (Miss. 1998).

> This [abuse of discretion] standard is very difficult to meet. In fact, the "'discretion of the trial judge runs toward almost unlimited admissibility regardless of the gruesomeness, repetitiveness, and the extenuation of probative value.'" *Brown*, 690 So. 2d at 289; *Holley*, 671 So. 2d at 41. "At this point in the development of our case law, no meaningful limits exist in the so-called balance of probative/prejudicial effect of photographs test." *Chase*, 645 So. 2d at 849 (quoting *Williams v. State*, 544 So. 2d 782, 785 (Miss. 1987)).

Woodward, 726 So. 2d at 535; *See Stevenson v. State*, 733 So. 2d 177, 180 (Miss. 1998).

The State, regarding each and every photograph objected to here in this appeal, established the relevancy and probative value of each through testimony. The Appellant objected to the introduction of State's Exhibit 48 as gruesome and highly inflammatory. Tr. at 545. The appellant also objected to the introduction of State's Exhibits 48 and 49 and duplicative. Tr. at 545.

As to Exhibit 48, the officer testified:

> Q. All right. Let's move to the next exhibit. This is going to be Exhibit 48 for identification purposes. I believe you earlier testified that you were standing right there when it was opened; is that correct?
> A. That's correct.
> Q. Does Exhibit 48 help you identify what you first saw when that lid was opened?
> A. Yes, it does.
> Q. What does it show so far as you can remember?
> A. A body wrapped in a brown blanket.

Tr. 554.

As to State's Exhibit 49, the officer testified:

Q. This is going to be Exhibit 49. Before I discuss that exhibit, I want to ask you something. Was there a point in time when you and the other folks there in the area realized there was more than one body?
A. Yes, there was.
Q. How did that come about?
A. After the homicide or murder search warrant was obtained, we started collecting evidence and photographing. And after pulling the male body back out of the freezer, we located the female subject that was in the bottom.
Q. Were you able to immediately extract this female?
A. No.
Q. What did you do in an effort to extract the female?
A. The female body was the first in the freezer and then it was plugged in. And in the bottom there was a fluid that was frozen in the bottom too, so we had to thaw it out in order to get the body out of the freezer.
Q. Was all this thawing done right there on the farm?
A. Yes, it was.
Q. Was there a point in time when you were able to thaw out what was remaining in the freezer and observe it?
A. Yes.
Q. I want to show you Exhibit 49. Does that help you explain what you observed once it was all unfrozen?
A. Yes.
Q. What are we looking at?
A. A female subject that's wrapped in a blanket.
Q. Okay. And that's the way it came out of the freezer?
A. Yes, it was.

Tr. 556-57.

The remainder of the objected to exhibits all relate to the autopsies of the two victims. Dr. Donald Pojam conducted the autopsies and at trial he was tendered as an expert in the field of forensic pathology and accepted by the defense as such. Tr. 706.

Dr. Pojam testified as to the involvement of the autopsy photographs he selected to explain his testimony:

Q. Now, there were just a whole number of photographs. And when you and I met, what I asked you to do would be to go through and pick out a few of those photographs that would help you show and demonstrate what you're talking about to the jury. And I believe you did that, and you gave them to me.
A. That's correct.
Q. The photographs that we're fixing to start showing you, do you agree or disagree that those photographs will be useful to you or help you in explaining to this jury what injuries you found on your external examination?
A. Yes, they would..
Q. All right. With that in mind, it won't be up here yet, but you'll see on your screen what's been marked as State's Exhibit No. 66. And I'll ask you to tell me whether or not you can recognize that and then tell me whether or not that demonstrates any injuries and things you've been talking about with respect to Ms. Heintzelman.
A. Yes, I do recognize this photograph, State's Exhibit 66 which is presented on my screen, as a photograph that was taken at the time of the autopsy of Ms. Heintzelman. It shows her still with the bag around her head and her arms behind her back. The injuries that we see here are predominately on the right thigh. There is a large cut, or what I call an incise wound, on the front of the right thigh and also two additional cuts, or incise wounds, on the outer aspect or the hip region on the right-hand side.
Q. Now, as I look at the photograph, it appears to me that the bag you described previously is still in place.
A. That is correct, it is.
Q. And it also appears to me that the hands are bound behind her back.
A. They are, yes.

MR. WEATHERS: If it please the Court, at this time we would like to enter State's Exhibit No. 66 into evidence to demonstrate the injuries to this lady.

MR. ADELMAN: We would object, Your Honor, due to the inflammatory nature and it outweighs any probative value. The doctor can testify as to these matters. He has already testified, and this goes beyond any probative necessity.

THE COURT: he's also testified it would assist him in explaining his testimony. Note your objection and overrule the same.

Tr. at 714-15.

Dr. Pojam then went on to directly point out and explain to the jury the injuries that were the subject of the photograph. Tr. at 716. The same protocol was replayed for each photograph introduced into evidence as the prosecution showed all photos to be probative in that they helped the witness explain his answer as to the injuries inflicted on the two murder victims.

As to State's Exhibit 67:

> Q. Would the use of this photograph assist you in pointing out to the jury where these injuries are, what the injuries are, where they are, and how significant they are?
> A. Yes, they would.

Tr. 717.

Appellant's objection was overruled and Dr. Pojam briefly but concisely pointed out for the jury the injuries depicted in the photograph, a frontal view showing injuries to the abdomen and neck, that had been inflicted upon Ms. Heintzelman.

Tr. 718-19.

As to State's Exhibit 68:

> Q. Would the introduction of this photograph assist you in explaining to the jury the location of the cuts and show the extent of the cuts and where they are?
> A. Yes, it would.

Tr. 720.

As to State's Exhibit 69:

Q. Now, what you've got in front of you is State's Exhibit No. 69. Dr. Pojam, if you would look at that I would ask you this question. Does that particular photograph in your opinion show any additional injuries other than what you've already explained to the jury?
A. Yes, it does.
Q. Would the introduction of this photograph assist you in explaining to the jury the location of the injuries and the type of injuries and also let you demonstrate what in your opinion caused the injuries.
A. Yes, it would.

Tr. 721-22

As to State's Exhibit 70:

Q. The next photograph, State's Exhibit No. 70, would you look at that.
A. Okay.
Q. That appears to be the neck area. What I would ask before I ask for the introduction of this photograph is this question. Does this photograph depict any injuries to the right side of the neck or the chest area that we have not already seen in some other picture?
A. It does depict injuries on the right side of the neck and also an injury that's on the left side of the neck that have not been seen. It does demonstrate the injury differently than what we've seen before showing the extensive nature of the injury.
Q. You say there's at least one injury on there that you feel like we have not seen in one of these other photographs?
A. Correct. There's one injury that was not seen in the previous ones.
Q. All right. Do you feel the introduction of the photograph is necessary to assist you to explain what you saw in the autopsy to the jury and also the significance of that injury?
A. Yes, it would.

As to State's Exhibit 71:

Q. All right. When you first started talking about the external examination, you talked about head injuries. This appears to be going to those original injuries you were talking about. Would the photograph that you see on your screen assist you in explaining to this jury where these injuries were on Ms. Heintzelman's head, the significance of the injuries, the size of the injuries, and anything else that would help you to explain you opion in this case?

A. Yes, it would.

Tr. 726.

As to State's Exhibit 72:

Q. As with the other photographs, would the introduction of this exhibit aid you in describing to the jury the type wounds that you saw on your external examination, their location, and the significance of them?
A. Yes, it would.

Tr. 728-29.

As to State's Exhibit 73:

Q. Would the introduction of this photograph aid you in describing to the jury where these injuries are and the significance of them?
A. Yes, it would.

Tr. 730-31.

As to State's Exhibit 76:

Q. Would the introduction of this photograph assist you in showing the jury exactly where that wound you described is?
A. Yes, it would.

Tr. 734.

As to State's Exhibit 80:

Q. Now, besides the injuries caused by the dismemberment of Mr. Hulett's head, did you see any other injuries on the head?
A. Yes, I did.
Q. And you have in front of you what's been identified as State's Exhibit No. 80. With respect to this photograph, will this photograph assist you in describing for the jury the injuries that you found to the head?
A. Yes, it would.

Tr. 742-43.

As to State's Exhibit 81:

> Q. Would this photograph assist you in explaining the location of the injuries and the significance of those injuries to the jury?
> A. Yes, it would.

Tr. 745.

The prosecution painstakingly qualified each and every photograph that has been objected to as relevant, aiding in describing the circumstances of the killings, the cause of death and aiding in the clarifying or supplementing the witnesses's testimony to the jury. *Simmons v. State*, 805 So.2d 452, 485 (Miss.2001). Accordingly, this issue is without merit and should be denied by the Court.

V. THE TRIAL COURT CORRECTLY DENIED APPELLANT'S MERCY INSTRUCTIONS.

The appellant contends the United States Supreme Court has mandated the issuance of a mercy instruction in all death penalty cases during the sentencing phases of those trials. The case of *Kansas v. Marsh*, 126 S.Ct. 2516 (2006), was decided on the issue as to whether or not the Kansas death penalty statute violated the Eight Amendment's ban on cruel and unusual punishment because it provided for the jury is required to return a verdict for death if both the mitigating and aggravating circumstances were in equipoise. The Mississippi statute does not call for this mandatory finding by the jury and is dissimilar to the Kansas law. The United States Supreme Court went on to find that the Kansas law did not violate the Eighth Amendment.. The Appellant relies upon the Court's brief acknowledgment that the Kansas court allowed an instruction that included mercy as a factor. *Id.* at 2526. The

reliance by the Appellant on the *Marsh* decision is sorely misplaced. The decision in no way mandates mercy instructions nor does it overrule the long settled case law contained in *Saffle v. Parks*, 494 U.S. 484, 492-95, 110 S.Ct. 1257, 1262-64, 108 L.Ed 415 (1990), the standard case long referenced regarding mercy instructions.

> This Court has long maintained that mercy instructions are improper:
>
> > [J]ury instructions are within the sound discretion of the trial court. Goodin v. State, 787 So.2d at 657. In *Goodin*, this Court addressed the issue of mercy instructions and held:
> >
> > This Court has repeatedly held that "capital defendants are not entitled to a mercy instruction." *Jordan v. State*, 728 So.2d 1088, 1099 (Miss.1998) (citing *Underwood v. State*, 708 So.2d 18, 37 (Miss.1998); *Hansen v. State*, 592 So.2d 114, 150 (Miss.1991); *Williams v. State*, 544 So.2d 782, 788 (Miss.1987); *Lester v. State*, 692 So.2d 755, 798 (Miss.1997); *Jackson v. State*, 684 So.2d 1213, 1239 (Miss.1996); *Carr v. State*, 655 So.2d 824, 850 (Miss.1992); *Foster v. State*, 639 So.2d 1263, 1299-1301 (Miss.1994); *Jenkins v. State*, 607 So.2d 1171, 1181 (Miss.1992); *Nixon v. State*, 533 So.2d 1078, 1100 (Miss.1987)). "the United States Supreme Court has held that giving a jury instruction allowing consideration of sympathy or mercy could induce a jury to base its sentencing decision upon emotion, whim, and caprice instead of upon the evidence presented at trial." Id (citing *Saffle v. Parks*, 494 U.S. 484, 492-95, 110 S.Ct. 1257, 1262-64, 108 L.Ed 415 (1990)).

Howell v. State, 860 So.2d 704, 759 (Miss.2003).

As recently as this year, 2007, this Court has reaffirmed the long standing position that mercy instructions not be allowed. Following the logic contained in the *Howell* decision, supra, this Court still maintains that mercy instructions are not appropriate and shall not be given. *See King v. State*, 960 So.2d 413, 441-42 (Miss. 2007). The Appellant's determination that the United States Supreme Court has mandated mercy instructions are now

mandatory in capital cases is completely without merit. It is well settled law in Mississippi that no mercy instructions be presented to the jury and as such the Appellant is not due any relief on this issue.

VI. THE APPELLANT'S ARGUMENT REGARDING TRAVEL EXPENSES FOR SENTENCING PHASE WITNESSES IS PROCEDURALLY BARRED.

The Appellant contends she was wrongly denied the presence of two witnesses, Loma Wagner and Veronica Scheuning, because the trial court denied travel and lodging expenses for the pair. As the Appellant never obtained a ruling from the trial court regarding the issue this claim is procedurally barred from consideration.[1]

As this Court has held previously regarding the lack of a ruling on a pre-trial motion:

> ¶ 41. Under Rule 2.04 of the uniform Rules of Circuit and County Court Practice, the burden is on the movant to obtain a ruling on a pre-trial motion, and failure to do so constitutes a procedural bar. FN5 *See Berry v. State,* 728 So.2d 568, 570 (Miss.1999) ("It is the responsibility of the movant to obtain a ruling from the court on motions filed by him and failure to do so constitutes a waiver of same."); *Holly v. State*, 671 So.2d 32, 37 (Miss.1996) (finding that the burden to obtain a ruling on an in limine motion to exclude evidence rests on the moving party); *Martin v. State*, 354 So.2d 1114, 1119 (Miss.1978) (same). The orderly administration of justice dictates that the trial judge be vested with a considerable amount of discretion with respect to trial calendering and docket management, and we will not overturn a trial court's

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[1]The Appellant attempts to remedy the lack of a ruling from the trial court on the claim by filing a statement pursuant to Mississippi Rule of Appellate Procedure 10 (c). The Appellant was required to file within 60 days of the notice of appeal, a statement conveying a fair, accurate and complete account of the proceedings in question. The Appellant did not comply with these requirements as she filed her statement outside the required time frame, the appeal notice being filed on August 28, 2006, (C.P. 389) and the statement was filed on December 20, 2006. Additionally, the statement contained only the bare allegation that the trial court verbally denied the motion is devoid of any specific facts regarding the allegation.

decision absent an abuse of discretion. *Palmer v. State,* 427 So.2d 111, 114 (Miss.1983).

¶ 42. Ross' failure to obtain a ruling on his pre-trial motion was a direct result of his failure to request a ruling at an appropriate time. The trial court expressly noted that it had provided a time to hear pre-trial motions and that conducting an evidentiary hearing on the pistol was inconvenient since the venire members had been convened and were waiting outside the courtroom. Further, the trial court did not deny the motion to suppress, but instead reserved judgement until the State moved to introduce the weapon into evidence. Therefore, the trial judge did not err in declining to rule on Ross' pre-trial motion.

> FN5. "It is the duty of the movant, when a motion ... is filed ... to pursue said motion to hearing and decision by the court. Failure to pursue a pretrial motion to hearing and decision before trial is deemed abandonment of that motion; however, said motion may be heard after the commencement of trial in the discretion of the court." U.R.C.C.C. 2.04.

Ross v. State, 954 So.2d 968, 992 (Miss.2007).

Chamberlin filed her witness list on May 4, 2006, and both witnesses in question were identified on that list. C.P. 197. On June 29, 2006, Chamberlin filed her motion to provide for travel and lodging expenses for the two witnesses. C.P. 256-57. Again, on July 28, 2006, Chamberlin filed another witness list that still contained the names of the two potential witnesses on July 28, 2006. C.P. 254. The record of this case shows that at no time did Chamberlin attempt to obtain a ruling on the motion.

The Appellant waived the issue of travel and lodging expenses for the potential witnesses in that she took no action to secure a ruling on the motion and is therefore procedurally barred from arguing the issue. *Ross v. State*, at 992.

CONCLUSION

For the above and foregoing reasons, the State submits that Appellant's conviction of capital murder and sentence of death should be affirmed. Furthermore, a date for the execution of the sentence of death should be set according to statute.

Respectfully submitted,
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I, Pat McNamara, Special Assistant Attorney General for the State of Mississippi, 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 for Appellee to the following:

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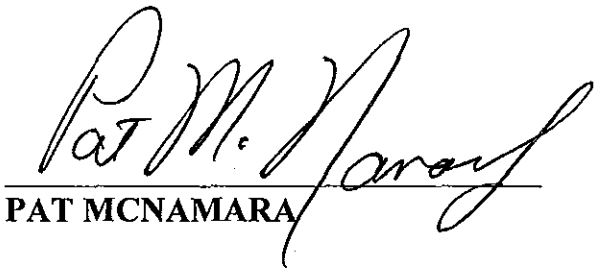
This the 15th day of October, 2007.



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I, Pat McNamara, Special Assistant Attorney General for the State of Mississippi, 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 for Appellee to the following:

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