IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

MARY DIXON — APPELLANT

VS. — NO. 2007-KA-0770-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

PROCEDURAL HISTORY

This appeal proceeds from the Circuit Court of the First Judicial District of Hinds County, Mississippi, and a judgment of conviction for capital murder, Miss. Code Ann. § 97-3-19(2)e. A Hinds County Grand Jury indicted Mary Dixon on June 9, 2005, on a charge of Capital Murder, with robbery as the underlying felony, all in violation of Miss. Code Ann. § 97-3-19(2)(e) (1972). Dixon entered a plea of not guilty and proceeded to trial by jury commencing on October 2, 2006, with Honorable Bobby DeLaughter presiding. During the course of the trial defense counsel unsuccessfully moved to suppress statements Mary Dixon made to Deputy Pam Turner. On October 5, 2006, Dixon was found guilty, and subsequently sentenced to life in the custody of the Mississippi Department of Corrections. Dixon sought review of her conviction and sentence through a post-trial motion for Motion for Judgment Non Obstante Verdicto or, in the Alternative, a New Trial, which the court denied. (CP 48-49). On appeal, Dixon raised the following issues:

I. The trial court erred in refusing the motion to suppress alleged statements by Mary Dixon, who could not read; the statements were involuntary and given without adequate warning or waiver of her fundamental rights under Amends. V, VI, XIV, U.S. Const., and Art.3, § 26, Miss. Const.

II. The trial court erred in denying the motion of Ms. Dixon for a directed verdict, for refusing the request of Ms. Dixon for a peremptory jury instruction, and for rejecting his Motion for Judgment Notwithstanding the Verdict, as the evidence was insufficient as a matter of law to support the verdict of the jury, which was contrary to law and against the overwhelming weight of the evidence.

III. The trial court erred in admission of testimony from Stephen Hayne and photographs from the autopsy of Melcenia Bell due to the inflammatory and prejudicial nature of the photographs and inability of Hayne to testify to the origin of the injuries depicted. Further, some of the photographs were irrelevant and were submitted solely for the purpose of inflaming the jury, thus depriving Ms. Dixon of her fundamental right to a fair and impartial trial.

STATEMENT OF THE FACTS

Between 7:00 to 7:30 a.m. on the morning of Thursday August 19, 2004, Elizabeth Eubanks, a home health employee, arrived at the home of 93 year old Melcenia Bell. Eubanks' duties included assisting Mrs. Bell with her bath and in dressing. That morning after her bath, Mrs. Bell dressed in a white housecoat with pink flowers. As usual, Mrs. Bell pinned her billfold inside her clothing. Mrs. Bell, who received rental income from apartments behind her house, had just received $300 in weekly rent, plus $475 from her son, Daryl Keith Bell, for an upcoming trip. (T 213-14). Eubanks usually left Ms. Bell's house around 9:00 a.m. and did so that morning. When Eubanks left, Mrs. Bell was sitting on a daybed in the front room of her house. Ms. Eubanks customarily left the front door unlocked so Meals-on-Wheels could deliver Ms. Bell's lunch. (T 176-77).

Jack Tucker with Meals-on-Wheels arrived at Ms. Bell's house at approximately 9:45 a.m. to deliver her meal. Upon entering the house, he found Mrs. Bell lying on the floor, unclothed, covered in blood and asking him to call 911. He also noticed a bloody ax on Ms. Bell's bed. Tucker returned to his vehicle and radioed his dispatcher to send an ambulance. (T 182-84).

Paramedic Deon McIntosh entered Mrs. Bell's house to find her bloodied on the floor next to a bed and a bloodied ax on the bed. Mrs. Bell, bleeding profusely, appeared to have multiple puncture wounds and a screwdriver protruding from her neck. She was conscious but combative. (T 191). Mrs. Bell was transported by ambulance to the hospital. She died December 12, 2004, after a lengthy stay in the hospital and a nursing home.

Jackson Police Department Crime scene investigator Andrew McGahey testified at trial that numerous items were recovered from the gruesome crime scene. In the bedroom, McGahey found bloody linens, towels and a blanket, a bloody wooden maul or ax handle and a cigarette butt on the

floor; in the front room with Mrs. Bell, a bloody pillow, Mrs. Bell's bloody white and pink floral housecoat with fecal matter; and pieces of bloodied toilet paper. (T 236-39; 241; 253). During the crime scene investigation, police found Mrs. Bell's black wallet empty on the floor near the bed. (T 248). On the front porch, McGahey found a drop of blood and a coke can. (T 255). McGahey testified he was only able to get two latent fingerprints from the crime scene and they were on the Coke can recovered from the porch. (T 267). McGahey also testified the blood and fingerprints from the porch could not be matched to any known suspects. No physical evidence of Mary Dixon was found at the crime scene.

Around 12:00 p.m. the day of the assault, Mary Dixon, Jacqueline Wallace and Tony Edwards were taken to police department offices for questioning by Detective James Roberts, the lead detective in the case. Officer Charmaine Valentine transported Dixon in her patrol car. Dixon was not under arrest but for safety purposes, Officer Valentine conducted a cursory "pat down" search of Dixon prior to getting in the car. No money, or weapons were found. Dixon was not handcuffed. Officer Valentine testified while in transport Dixon said "Tony Edwards killed the old lady" (T 422-25).

On the day of the assault Detective James Roberts interviewed several "people of interest," including Mary Dixon, Jacqueline Wallace and Tony Edwards. Roberts read Dixon the Miranda warnings from a form which she initialed to acknowledge that she understood her rights. (T at 398). Dixon told him she could not read but could write. During the interview Dixon first said an individual named Mike was involved in the assault but denied any involvement herself. After writing down her statement, Roberts read it back to Dixon and she initialed it. Roberts testified Dixon told him she did not have any money early in the morning of the assault but she did have some later in the day. She claimed that she performed oral sex on a man for the money but then said

she stole his wallet. (T at 304). On cross examination, Roberts testified another person told him about Dixon having the money.

While at police offices, Dixon's clothes were collected for DNA testing and analysis. A small spot of blood found on Dixon's pants did not match Mrs. Bell's blood. No other blood was found on Dixon's clothes or shoes. (T 310-11).

At Dixon's trial, Antonio Dixon, also known as "T. Tucker" or "Tony," testified that while in his house on the day of the assault, he saw Mary Dixon and a woman called "Droopy" walking on a public path in the direction headed away from Mrs. Bell's house, between 8:00 to 9:00 a.m. The path runs beside Mrs. Bell's house from Dreyfus Street to Blair Street. Mrs. Bell lived on Dreyfus Street and Antonio Dixon lived on Blair Street directly behind Mrs. Bell's house. (T at 223-25). Although Antonio Dixon testified he saw Mary Dixon later the same day, and he assumed she looked pretty much the same, he saw her in a police car and testified that couldn't remember what she was wearing. (T at 228, 230).

Deputy Pamela Turner with the Hinds County Sheriff's Department testified that on May 5, 2005, she was advised by her supervisor that a female inmate at the Hinds County Jail in Raymond wanted to share some information on a nightclub in Jackson that was cooking crack cocaine. Turner met with Dixon on the illegal drug activity and while in transit to Jackson, Dixon made her first statement about Mrs. Bell's murders. Turner met Dixon on six more occasions. At each meeting, Dixon's statements to Turner changed. Dixon went from saying she was smoking crack on the porch of the house next door to Mrs. Bell's when Tony Tucker assaulted Mrs. Bell, to being on the porch of Mrs. Bell's house during the assault and calling 911 after the assault, to giving a description of Mrs. Bell's floral housedress, and the objects used to assault Mrs. Bell and to admitting she knew Mrs. Bell kept her money pinned inside her clothing and that the front door

would be unlocked. (T 370-87).

Gladys Powell, a previous co-worker of Dixon's testified to Dixon's admissions Dixon made to her one day at work. (T 275-80).

Charmain Kelly, an inmate in the Rankin County Correctional facility and previous cellmate of Dixon's, testified to admissions Dixon made to her when they were incarcerated together. (T 427-46).

The testimony of Dr. Kendall McKenzie, the emergency room physician who treated Mrs. Bell after the assault, Dr. Harvey Sanders, the physician who treated Mrs. Bell the night of her death, and Dr. Stephen Hayne, the pathologist who conducted Mrs. Bell's autopsy, connected the assault on Mrs. Bell on August 19, 2004 to her death on December 12, 2004. (T 276; 282-91; 391-419).

SUMMARY OF THE ARGUMENT

The trial court properly ruled Mary Dixon's statements to Deputy Pam Turner were admissible in evidence. Several of Dixon's statements were not confessions within the meaning of *Miranda v. Arizona*, 384 U.S. 436 (1966) and therefore the statements could be admissible even if Turner did not advise Dixon of her constitutional rights before interviewing her. Considering all the facts and circumstances surrounding Dixon's statements to Turner, the State met its burden of proof beyond a reasonable doubt that the statements were knowingly, intelligently and voluntarily given and therefore admissible.

The State asserts it produced sufficient evidence at trial to submit the issue of Dixon's guilt or innocence to the jury for its determination and that in viewing the evidence in a light most favorable to the State, reasonable and fair minded jurors could only have found Dixon guilty of the murder of Mrs. Melcenia Bell, while in the act on robbing her.

Dixon's assertion that the trial court incorrectly admitted Dr. Steve Hayne's testimony and autopsy photographs in evidence is procedurally barred. Dixon failed to make a contemporaneous objection at trial to the photographs and testimony and therefore is procedurally barred.

ARGUMENT

I. THE TRIAL COURT DID NOT ERR IN REFUSING TO SUPPRESS DIXON'S STATEMENTS; DIXON'S STATEMENTS WERE KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY GIVEN.

Dixon asserts as her first assignment of error that the trial court erred in finding her statements made May 4, 9, 11, 16, 20 and 25 were voluntary due to the State's failure to prove beyond a reasonable doubt that the statements were given in a knowing, intelligent and voluntary manner as set forth in *Miranda v. Arizona*, 384 U.S. 436 (1966). It is undisputed that during the entire period in question, May 4-25, 2005, Dixon remained in the custody of the Hinds County Sheriff's Department and that Dixon knew Deputy Turner was a law enforcement officer. Deputy Pam Turner testified there were no threats of violence, no intimidation, an no promises or rewards offered Dixon in exchange for her statements.

In *Chim v. State*, 972 So.2d 601 (Miss.2008) the Mississippi Supreme Court held,

> "For a waiver of one's Miranda rights to be considered valid, the state must prove beyond a reasonable doubt that " 'the waiver [was] made voluntarily, knowingly and intelligently.'" *Coverson v. State of Mississippi,* 617 So.2d 642, 647 (Miss.1993) (citations omitted). A waiver is considered voluntary if it is the result of a "free and deliberate choice rather than intimidation, coercion or deception." Id. " '[A] waiver is knowing and intelligent if it is made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it.'" Id. (citations omitted).
> "The trial judge sits as the trier of fact and must determine whether the incriminating statement was freely and voluntarily given. The judge should determine whether the criminal defendant was advised of his rights, including the right against self-incrimination as set forth in Miranda...."Baldwin v. State, 757 So.2d 227, 234 (Miss.2000). Furthermore, "the judge should ascertain, under the totality of the circumstances and beyond a reasonable doubt, that the defendant's statement was freely and voluntarily given, and was not the result of force, threat, or intimidation." Id. (citing Smith v. State, 737 So.2d 377, 382 (Miss.Ct.App.1999)"

In the case sub judice the trial judge conducted a suppression hearing outside the presence of the jury, as required by law, and concluded that the State met its burden and proved that Dixon's statements were knowingly, freely and voluntarily given and not the result of force, threat or

intimidation.

The issue of Miranda rights are factors for the Court to consider in determining whether or not from the totality of the circumstances the statement given by a person in custody and being interrogated is the product of the person's voluntary will or whether or not it's an involuntary statement. *Hunt v. State,* 687 So.2d 1154 (Miss.1997). Considering all the facts and circumstances surrounding Dixon's statements the State met its burden of proof beyond a reasonable doubt that the statements were knowingly, intelligently and voluntarily given and therefore admissible.

Dixon argues that Deputy Turner should have given her Miranda warnings in writing each time she talked with her. That is not the law in Mississippi. In *Carlisle v. State,* 822 So.2d 1022, 1027 (Miss.App.,2002) this court quoted the Mississippi Supreme Court "*Miranda* does not require that a criminal defendant be advised of his rights every time there is a brief pause in questioning. Miranda simply requires that '[i]f the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease.' *Taylor v. State*, 789 So.2d at 794(¶ 27) (citing *Miranda v. Arizona*, 384 U.S. 436, 473-74 (1966)).

Under the ruling in *Connor v. State*, 632 So.2d 1239, ¶21 (Miss.1993) "Statement in which defendant categorically denied committing kidnaping, robbery and murder was not a "confession" for purposes of rule holding that all law enforcement officials present at the scene of a confession must appear at trial in which voluntariness of confession is contested." as set forth in *Agee v. State*, 185 So.2d 671(Miss.1966).

The State would argue that the requirements of *Miranda* and *Agee* are not triggered because the statements Mary Dixon made to Deputy Turner were not confessions at all. Dixon argues in her brief, that her statements were a denial of any participation in the attack or robbery of Mrs. Bell. Therefore, how can Dixon's statements be considered confessions, thereby triggering *Miranda* and

Agee, if the statements are complete denials. (App.Brief 12)

I will address each statement made to Turner separately.

May 4, 2005 Statement - Dixon told Turner that Tony Tucker was involved in the assault. On May 4, 2005, Deputy Turner checked Dixon out of the Raymond jail in order to conduct an undercover drug operation in Jackson. Turner did not question Dixon in reference to Mrs. Bell's murder. While in route to Jackson, Dixon voluntarily made statements without solicitation from Turner.(T 326) Turner told Dixon that the Bell murder was not their assignment for that day and she would talk with Dixon about the matter later if Dixon so wanted. Dixon wanted contempt of court charges with the City of Jackson dropped in exchange for her information about some people cooking dope at a nightclub in Jackson. Turner advised Dixon that she couldn't do anything about her contempt of court charge in Jackson. (T 324-27). The trial court ruled Dixon's statements on this occasion did not constitute a confession and were admissible.

May 9, 2005 Statement - On May 9, 2005, Turner returned to the Raymond Jail to question Dixon about Mrs. Bell's murder. Turner read Dixon her rights and Dixon signed a waiver. Deputy Rebecca Pittman was present at the interview but did not testify. Dixon argues that she could not read the waiver she signed, therefore, her statement was not knowingly and intelligently given. However, Turner testified Dixon acknowledged she understood her rights as read to her. (T 359). Dixon also argues Pittman was present at the interview and therefore should have testified but didn't. The State made a prima facie case that the Dixon's statements on May 9 were voluntarily, knowingly and intelligently made and there was no evidence to indicate otherwise, so Pittman was not required to testify.

May 11, 2005 Statement - Turner indicated she was at the abandoned building next door to Mrs. Bell's smoking crack when Tony Turner assaulted Mrs. Bell (T 376). Turner attempted to record

the interview on May 9th but the recording equipment malfunctioned, so she returned to the jail on May 11, 2005, to talk to Dixon. The first thing Turner said to Dixon was to remind Dixon of her constitutional rights that had been given to her on May 9 and asked her if she understood them. (T. 330). Turner testified that Dixon acknowledged she understood her rights and did not want an attorney. (T 330-32). Turner recorded the interview with Dixon's knowledge. The trial court found that Dixon affirmed she understood her rights when she answered questions Turner posed to her. Deputy Rebecca Pittman was present during this interview but did not testify at trial. The trial court ruled that Dixon's statements did not fall within the definition of a confession and were voluntarily, knowingly and intelligently given. There was no evidence to indicate otherwise so Pittman was not required to testify. (T 342).

May 16, 2005 Statement - Dixon told Turner she was on Mrs. Bell's front porch when Tony Tucker assaulted Mrs. Bell. (T 377). Turner returned to the jail on May 16, 2005, for the polygraph. Turner verbally reminded Dixon of her Miranda rights. (T 343). After Dixon decided she wasn't ready to take the polygraph, Turner and Dixon stepped outside to smoke. Dixon became upset, started crying and said she wanted to tell the truth about where she was when Tony Tucker hurt Mrs. Bell. Turner testified she calmed Dixon down and asked if she wanted to talk some more. Dixon told Turner she wanted to go back to her cell. Turner asked her when she wanted to talk again and Dixon replied Wednesday, Thursday or Friday. Turner told her she could come back another day. Dixon returned to her cell. (T 342-44; 357; 367) Dixon argues on appeal that the statements on May 11 should not be admitted because she told Turner she didn't want to discuss the case but Turner continued to question her anyway. However, Turner testified to a different sequence of events and no evidence was offered to contradict her testimony. Turner testified Dixon said she wasn't ready to take the polygraph and then they talked. Turner further testified that once Dixon

said she didn't want to talk anymore and wanted to go to her cell, she did. (T 343). Dixon cites *Burnside v. State,* 544 So.2d 1352 (Miss.1989) for the proposition that Turner should not have stopped questioning Dixon after she indicated she wanted to go back to her cell. Burnside signed a waiver of rights but when he sought to end his interrogation and asked for counsel, they continued to question him, therefore the court excluded his statement. This case is distinguishable from *Burnside*. In the case at bar, when Dixon told Deputy Turner she didn't want to talk anymore right then, Turner allowed her to return to her cell. (T 343-45). The trial court correctly found Dixon received adequate Miranda warnings and that the statements were not a confession and therefore Miranda and Agee requirements were not triggered.

May 20, 2005 Statement - Dixon told Turner she knew the door would be unlocked; that she was on the porch smoking crack; and that Tony Tucker hit Mrs. Bell with his hand, stabbed her with a knife, stabbed her in the neck with an ice pick and then hit her with an ax that was in the house. Dixon told Turner that Mrs. Bell's money was in a pocket wallet that she described was in her gown and then described her gown. (T 378-79; 381). On May 20, 2005, Turner checked Dixon out of jail, after a brief stop at McDonald's, Turner took Dixon to 827 Dreyfus Street, the crime scene. As with previous meetings, Turner verbally reminded Dixon of her *Miranda* rights. Again, the trial judge correctly found the statements were not a confession and admitted them into evidence.

May 25, 2005 Statement - On May 25, 2005, Turner returned to the jail and once again reminded Dixon of her rights. Dixon freely talked to Turner and identified Tony Edwards in a photo line-up. (T. 382). The trial judge found that Dixon's identification of someone else was not a confession and admitted the statements in evidence.

II. THE TRIAL COURT DID NOT ERR IN DENYING DIXON'S MOTION FOR A DIRECTED VERDICT, FOR REFUSING THE REQUEST OF MS. DIXON FOR A PEREMPTORY JURY INSTRUCTION, AND FOR REJECTING DIXON'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT. THE STATE PROVIDED LEGALLY SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S VERDICT.

Dixon asserts on appeal that the lack of physical evidence to tie her to the murder of Mrs. Melcenia Bell together with questionable testimony of witnesses were inadequate to support a capital murder conviction. Dixon argues the State's evidence was insufficient because there was no physical evidence that Dixon was at Mrs. Bell's house, Dixon's statements were not voluntarily made and the State's witnesses had a reason to lie. The question before this Court is whether there is sufficient evidence, as a matter of law, from which a rational trier of fact could find guilt beyond a reasonable doubt, and the answer is yes.

Evidence is legally sufficient to support a jury verdict when the State has proven that the defendant committed every element of the crime charged. *Bush v. State,* 895 So.2d 836, 843 (¶16) (Miss.2005). "In appeals from an overruled motion for a directed verdict or JNOV the sufficiency of the evidence as a matter of law is viewed and tested in a light most favorable to the State." *McClain v. State*, 625 So.2d 774, 778 (Miss.1993). In considering whether the evidence is sufficient to sustain a conviction in the face of a motion for directed verdict or JNOV, the critical inquiry is whether the evidence shows beyond a reasonable doubt that the accused committed the act charged, and that he did so under such circumstances that every element of the offense existed; and where the evidence fails to meet this test it is insufficient to support a conviction. *Dilworth v. State,* 909 So.2d 731 (Miss.2005) citing *Carr v. State*, 208 So.2d 886, 889 (Miss.19680 The court is required to view the evidence in a light most favorable to the State and if a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, the verdict should stand. *Dilworth* at 736.

The State asserts that the evidence presented at trial is sufficient to support a conviction and would direct the Court's attention to many of those facts.

Elizabeth Eubanks, the home health worker, testified Mrs. Bell had a wallet with money pinned inside her clothing. Eubanks gave a description of the clothing Mrs. Bell was wearing at the time of the assault. Eubanks testified the front door was left unlocked.

Andrew McGahey, the JPD crime scene investigator, testified to the bloody objects apparently used to assault Mrs. Bell. He further testified Mrs. Bell's empty black wallet was found on the floor and her white and pink flowered house dress was found bloodied and on the floor.

Dr. Kendall McKenzie, the emergency room doctor who treated Mrs. Bell, testified that she had multiple stab wounds and lacerations to her face, "mainly on the left side and some on the right above the nose." She also had stab wounds on the left side of her chest and left upper extremity and a screwdriver impaled in the left side of her neck. (T 271; 273).

Dr. Harvey Sanders, Mrs. Bell's treating physician on the night of her death, testified that the injuries Mrs. Bell received in the August 19, 2004 assault facilitated and contributed to her death even though she did not die immediately after the assault. (T 285-90 and 292). Dr. Sanders deferred to the pathologist who performed the autopsy to be better able to determine Mrs. Bell's cause of death. (T 268).

Dr. Stephen Hayne testified that after reviewing the records and performing his examination of Mrs. Bell's body he was able to reach a conclusion with a reasonable degree of medical certainty as to the cause of Mrs. Bell's death. Hayne further testified that Mrs. Bell "... died status post blunt force trauma and multiple stab wounds, eventually evolving into multi organ system failure." (T 397).

Antonio Dixon, also known as T. Tucker or Tony, testified he saw Dixon between 8:00 to

9:00 a.m. walking the direction from Mrs. Bell's house on a public path beside Mrs. Bell's house with a woman named Droopy. Dixon lived on Blair Street directly behind Mrs. Bell's house. Although Antonio Dixon said he saw her later the same day, and he assumed she looked pretty much the same, he saw her in a police car and couldn't remember what she was wearing. (T 223-30).

Officer Charmaine Valentine testified while in transit to JPD offices on the day of the assault, Dixon said "Tony Edwards killed the old lady" (T 422-25).

Detective James Roberts with the Jackson Police Department testified he questioned Dixon the afternoon of the assault and she identified a man named Mike as being involved in the assault. (T 293-308).

Deputy Pam Turner testified to the many statements Dixon made from saying she was smoking crack on the porch of the house next door to Mrs. Bell's when Tony Tucker assaulted Mrs. Bell, to being on the porch of Mrs. Bell's house during the assault. Dixon described in detail the objects used to assault Mrs. Bell and also the white with pink flowered housedress Mrs. Bell was wearing when assaulted. Dixon also admitted to knowing Mrs. Bell's door was going to be unlocked the morning of the assault and that Mrs. Bell kept her wallet pinned inside her clothing. These details of the crime scene were known by the person committing the assault and were not released to the public. (T 370-87).

Gladys Powell, who used to work with Dixon at McDonald's testified that while in the break room at work she asked Dixon about the murder.

> Q. Tell us whether or not you at some point had an opportunity to have a brief conversation with her about the incident which resulted in injuries to Melcenia Bell, an older woman?
>
> A. We was at work one morning and we was in the break room. We was watching some films on -- on our job and we was sitting beside each other, so I looked at her and I said, "You the lady that they got you charged with killing." She said,

"Yeah." I said, "Well, did you do it?" She said, "Well, that's what they say." I said, "Well, did you do it?" She said, **"They say I did it, I did it."** That's all.

Q. Did she ever at any point when you asked her that deny having killed Melcenia Bell?

A. No. (T 276). (Emphasis added by Appellee).

Finally, Charmain Kelly, a previous cellmate of Dixon's, testified that when she and Dixon were cell mates, Dixon admitted to her that she assaulted Mrs. Bell but said she was going to put it off on Tony Tucker. Dixon admitted to telling her coworkers at McDonald's about the assault and laughing about it. Dixon told Kelly that she took the money from Mrs. Bell and bought drugs with Tony Tucker. Kelly testified Dixon admitted specific details of the crime. (T 432-34).

Q. Okay. What did she say about what actually happened?

A. She said that she went into Ms. Bell's house. She went in there to rob Ms. Bell, to see if she had any money so that she was robbing her for drug for drug money. She said she went in. She said Ms. Bell was in the house. She said when she went in there she asked Ms. Bell for the money and Ms. Bell wouldn't give her the money. I asked – she said that Ms. Bell was – she was not naked but she had on a house coast. She said she could tell that Ms. Bell had got out of the shower or was fixing to get in the shower or the tub and she said that's when she proceeded to rob Ms. Bell. Ms. Bell put up a fight.

Q. What did she say she did then?

A. She said that she tried to get the money from Ms. Bell. Ms. Bell wouldn't give her the money. And she told me that she stabbed Ms. Bell with the screwdriver and she hit her with the ax. (T 433-34).

....

Q. Was there some discussion about Ms. Bell being found naked?

A. Yes, sir.

Q. And what did she tell you?

A. She said that Ms. Bell was naked. And I asked why was Ms.

> Bell naked. And she said because someone else was with her. And I asked her, I said, who else was with you? She said, she wasn't going to tell me. I told her, I said, well, then, why would you leave her naked if you had anything to do with it? She said to make it seem like that a man had did it and that she wasn't involved with it. (T 435).

Dixon asserts that the testimony of Charmain Kelly was not credible because Kelly was a prior convicted felon for crimes of dishonesty, and faced criminal charges when she initially contacted the district attorney's office concerning Dixon's incriminating statements. Kelly testified that she didn't have any motive for testifying, she "just want Ms. Bell to have justice." (T 447). Although Kelly is a prior convicted felon, she had nothing to gain by testifying against Dixon, no reason to lie. Kelly was already serving her time in another county when she testified at Dixon's trial. She was not promised any reward or leniency in exchange for her testimony. The trial court properly instructed the jury on the law concerning the testimony of jailhouse informants. Instruction No. 4 instructed the jury that if they believed Charmain Kelly received or hoped to receive favorable treatment in exchange for testimony then the jury "... must weigh her testimony with great care and caution, and look upon it with distrust and suspicion." If the jury believed she did not received special treatment, then they were to weigh her testimony as any other witness. (CP 37). The jury heard Kelly's testimony and believed it.

As this Court explicitly stated in *Williams v. State*, 923 So.2d 990 (Miss.2006), quoting *Neal v. State*, 451 So.2d 743, 758 (Miss.1984), "[u]nder our system, the jury is charged with the responsibility for weighing and considering conflicting evidence and the credibility of witnesses." Id. See, e.g., Pearson v. State, 428 So.2d 1361, 1363 (Miss.1983); *Gathright v. State*, 380 So.2d 1276, 1278 (Miss.1980). Further, this Court will not reverse criminal cases where there is a straight issue of fact, or a conflict in the facts; juries are impaneled for the very purpose of passing upon such questions of disputed fact, and the Court won't invade the province and prerogative of the jury.

Hyde v. State, 413 So.2d 1042, 1044 (Miss.1982) (quoting *Evans v. State*, 159 Miss. 561, 132 So. 563, 564 (1931)). The appellate court does not re-weigh the facts in each case and go behind the jury to determine whether the testimony and evidence the jury chose to believe were credible. See *Langston v. State*, 791 So.2d 273 (Miss.Ct.App.2001).

The evidence was sufficient for the jury to find that Dixon entered Melcenia Bell's house, robbed her of the money she kept in a wallet pinned inside her clothes, and without authority of law, savagely beat this frail woman. The evidence further shows Mrs. Bell died as a result of the injuries she received from the brutal assault. After considering the totality of the evidence, the facts are overwhelmingly in favor of the guilty verdict returned by the jury. Moreover, no reasonable juror could have reached a contrary verdict in the case at bar.

III. THE TRIAL COURT WAS CORRECT IN ADMITTING DR. HAYNE'S TESTIMONY AND ACCOMPANYING AUTOPSY PHOTOGRAPHS OF THE DECEASED.

As her final assignment of error, Dixon contends the trial court erred in admission of testimony from Dr. Stephen Hayne and photographs from the autopsy of Melcenia Bell. Dixon claims Hayne was unable to testify to the origin of the injuries depicted in some of the photographs. Dixon further claims some of the photographs were irrelevant and were submitted solely for the purpose of inflaming the jury, thus depriving Ms. Dixon of her fundamental right to a fair and impartial trial.

The fact that a photograph of the deceased in a homicide case might arouse the emotions of jurors does not itself render it incompetent evidence so long as introduction of the photograph serves some legitimate, evidentiary purpose and the probative value outweighs any danger of unfair prejudice. M.R.E., Rule 403. In the case sub judice, the autopsy photographs were relevant to show the jury the location of the scars from the wounds Mrs. Bell received in the assault.

The admission of photographs is within the discretion of the trial judge and his or her decision will be upheld absent an abuse of that discretion. *Hart v. State,* 637 So.2d 1329, 1335-36 (Miss.1994). However, "[a]utopsy photographs are admissible only if they possess probative value." *McNeal v. State,* 551 So.2d 151, 159 (Miss.1989). They must not be so gruesome or used in such a way as to be overly inflammatory or prejudicial. *Hurns v. State,* 616 So.2d 313, 319 (Miss.1993).

Dixon makes a general claim that the use of autopsy photographs marked for identification as Exhibits 38, 40 and 42, while not admitted into evidence, were in error. Dixon made no contemporaneous objection at trial to Hayne's testimony in regard to Exhibits 38, 40 and 42 or in her motion for a JNOV so the issue is waived on appeal.

Dixon asserts the introduction of autopsy photographs marked as Exhibits 37, 41, 43 and 44 were merely to inflame the jury as to the "... brutality of the crime to one so vulnerable as Mrs. Bell." However, Dixon failed to make any contemporaneous objection at trial or in her motion for a JNOV so the issue is waived on appeal.

WEINBERG: We move the admission of that photograph, your Honor.
THE COURT: Any objection?
LABARRE: No, your Honor.
THE COURT: Be admitted, Exhibit 37. (T AT 405).

....

WEINBERG: We move the admission of that photograph, your Honor.
THE COURT: Any objection?
LABARRE: No, your Honor.
THE COURT: Be admitted, Exhibit 41. (T AT 409).

Dixon asserts that Exhibits 43 and 44 were irrelevant to testimony as to the cause of Mrs. Bell's death because her medical records indicate no wounds were located in the area of the body that was the subject of the photographs. The State would again assert that this issue was waived for failure to make a contemporary objection at trial or in her motion for a JNOV.

WEINBERG: We move the admission of that photograph, your Honor.
THE COURT: Any objection?
LABARRE: Can I see it, your Honor. I want to make sure which one it is.
(EXAMINED BY MR. LABARRE.)
No, your Honor.
THE COURT: Be admitted, Exhibit 43. (T at 411).

....

WEINBERG: We move the admission of that, your Honor.
THE COURT: Any objection?
Mr. LABARRE: No, your Honor.
THE COURT: Be admitted, Exhibit 44. (T at 412).

With the exception of Dixon's objection to the introduction of the photograph marked as Exhibit 36, which the trial court sustained, Dixon failed to contemporaneously object to Hayne's testimony and the use or admission in evidence of autopsy photographs. Dixon cannot now

complain about something which she did not object to in her trial. "A failure to object at trial waives any error which may have been presented, even in capital cases." *Foley v. State* citing *Duplantis v. State*, 644 So.2d 1235, 1245 (Miss. 1994) (quoting *Chase v. State*, 645 So2d 829, 859 (Miss.1994)); *Smith v. State*, 724 So.2d 280,316 (Miss. 1998).

CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal, the State would ask this reviewing court to affirm the jury's verdict and sentence of the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Lisa L. Blount, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Bobby Burt DeLaughter
Circuit Court Judge
Post Office Box 27
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Honorable Robert Shuler Smith
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Post Office Box 22747
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This the 30th day of April, 2008.

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