IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2007-KA-00770-COA

MARY DIXON — APPELLANT

VERSUS

STATE OF MISSISSIPPI — APPELLEE

APPEAL FROM THE CIRCUIT COURT OF THE 1ST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

REPLY BRIEF BY APPELLANT

Appellant seeks oral argument of this cause

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STATEMENT REGARDING ORAL ARGUMENT

Counsel for Ms. Dixon respectfully requests oral argument in this cause in order to further highlight for the Court the judicial policy problems with the failure of the trial court to suppress statements involuntarily given during custodial interrogation. Ms. Dixon contends that her fundamental rights to due process of law and to avoid compelled incrimination under both state and federal constitutions were thus abridged by the use of statements involuntarily given to Officer Pam Turner.

ARGUMENT

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, § 14; 26, MISS. CONST.;

> 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. At this point, he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked.

Miranda v. Arizona, 384 U.S. 436 at 473-474, (1966). [emphasis added].

With all due deference, Ms. Dixon would respectfully disagree with the conclusory discussion by honorable counsel for the state which seems to ignore the facts of this record. The State does concede that Ms. Dixon was at all times in the custody of the Hinds County Sheriff's Office. What the State fails to consider in its arguments is the testimony adduced at trial and pertinent federal constitutional minimums below which the state may not go, as it did in this case.

Det. Roberts testified that he interviewed Ms. Dixon the day of the assault against Mrs. Bell August 19, 2004, at which time she denied involvement in the assault. T. 297-298; 306. Ms. Dixon told Det. Roberts she was unable to read, but could write, as demonstrated by the fact that she would not sign the *Miranda* waiver, but initialed the statement Roberts read back to her. T. 301; 314; *Exhibit 32.* At issue in this case are statements given to Hinds County Deputy Pamela Turner, who took it upon herself to investigate the circumstances surrounding Mrs. Bell's assault. The statements include those made on

- May 4, 2005, when Turner first checked Ms. Dixon out of jail ostensibly to assist with an undercover narcotics buy in the city of Jackson; T. 325
- May 9, 2005, when Turner obtained a written Miranda rights waiver from Ms. Dixon, witnessed by another deputy, and which Turner attempted to aurally record; T. 327; 328.
- May 11, 2005, when Turner, testifying she "reminded" Ms. Dixon of her earlier waiver, and talking with her further regarding the assault on Melcenia Bell because Turner's first effort to aurally record the interview failed; T. 330.
- May 16, 2005, when Turner, again testifying she "reminded" Ms. Dixon that she had been Mirandized, sought to question Ms. Dixon; Ms. Dixon became upset and refused to take a polygraph test and told Turner she wanted to cease speaking and return to her cell; T. 343; 344
- May 20, 2005, when Turner checked Ms. Dixon out of jail, drove her to McDonald's restaurant to eat, then to 827 Dreyfus Street, where the assault occurred; T. 347; 354; 377-79; 384-385
- May 25, 2005, when Turner, once again relying upon her "reminder" asked Ms. Dixon to review a photographic line-up. T. 355

There can be little question that Deputy Turner conducted her own continuing interrogation of Ms. Dixon, all the while providing small favors such as checking her out of jail to go out to eat, use of Deputy Turner's cellular telephone to contact her children and the favor of giving Ms. Dixon cigarettes to smoke. T. 384-385. The assault and subsequent death of Mrs. Bell was highly publicized; more than five months after her death in December 2004, police had no solid information in tracking down the assailant who left her, nude and blood-soaked, on the floor of her home with a screwdriver sticking out of her neck – and some several hundred dollars in rent money missing from the housecoat she habitually wore. T. 176; 192; 213-214; 307.

Only once during this questioning did Turner, who surely knew the Jackson Police Department had primary responsibility for investigating the crime, ever bother to obtain a Miranda rights form waiver, on May 9. Turner, however, never bothered to ascertain whether Ms. Dixon was literate. T. 354; 355. Turner knew Ms. Dixon was represented by counsel; yet she never sought to inform *anyone* in the sheriff's department or the Jackson Police Department of what Ms. Dixon was ostensibly saying until May 18, 2005 – two days *after* a sobbing Ms. Dixon

Id., citing *Miranda v. Arizona* at 479. The admissibility of subsequent statements then depends on whether the individual's 'right to cut off questioning' was 'scrupulously honored.' *Id.* at 104.

The Court found that Detroit police had "scrupulously honored" Mosley's exercise of the right to cut off questioning as to the robberies, a right Mosley failed to invoke when questioned about the murder.

In the case at bar, the right of Ms. Dixon to terminate questioning was not scrupulously honored. Instead, Deputy Turner returned time and again, with small favors to ease incriminating statements from the illiterate Ms. Dixon, all regarding the same crime, the assault on Mrs. Bell. Certainly after May 16, when Ms. Dixon again invoked her right to silence, Deputy Turner, who acknowledged the ease with which she could have obtained *Miranda* waivers, should have so done. T.354-355.

There were no "brief pauses" as in *Taylor v. State*, 789 So.2d 787 (Miss. 2001) of ten minutes or so or even a few hours. Delays of several days occurred between questioning of Ms. Dixon by Deputy Turner, who instead testified she relied upon "reminders" to Ms. Dixon that she had waived her rights under *Miranda*.

In an alternative argument, learned counsel for the State would have this Court believe that Ms. Dixon's statements failed to qualify as "statements" under *Miranda*, a conclusion that fails to take into account Deputy Turner's testimony. Ms. Dixon ultimately told Deputy Turner she was present at the scene while Antonio Dixon/Tony Tucker/T. Tucker assaulted Mrs. Bell but did nothing because she was smoking crack cocaine. T.343; 378-379. At the very least, Ms. Dixon implicated herself as aiding and abetting the crime, or accessory before the fact, depending on the interpretation given her statements, both of which are crimes under the laws of this state.

Finally, counsel for the state never addresses the recommended procedure for law enforcement officers to give *Miranda* warnings in subsequent interrogations. How can the state fail to honor the recommendation it gives in training its law enforcement officers, such as Deputy Turner?

Ms. Dixon respectfully submits the full protections of *Miranda v. Arizona* and due process of law were denied her by the trial court's decisions regarding the statements made to Deputy Turner, who failed to follow recommended policy and procedure in once again notifying Ms. Dixon of her rights and obtaining a knowing, intelligent and voluntary waiver of her rights under the Fifth Amendment.

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, and

Physical facts adduced at trial undercut the state's argument on this assignment of error.

While counsel for the state does an admirable job reciting evidence attesting to the fact a crime took place – the assault of Mrs. Bell – the state does little to link the fact of the crime to the accusation that Ms. Dixon was the one who assaulted Mrs. Bell and took her money.

The scene was so blood-soaked that that paramedic Deon LaShawn McIntosh spent a good bit of time cleaning her blood from his ambulance after transporting her to the University of Mississippi Medical Center. T. 191; 195. Others, such as Officer Andrew McGahey, also testified to the bloody and gruesome scene. T. 233; 255; 259; 263. Yet, Ms. Dixon was in the same clothing throughout the day, as Antonio Dixon/Tony Tucker so testified – and the one small spot of blood found on her slacks failed to match that of Mrs. Bell when tested. T. 259;

310; 311. When arrested later on the afternoon of August 19 and subjected to an officer safety "pat down" search, no weapons or money of any kind were found on Ms. Dixon.T. 425.

Contrary to the state's assertion (*Brief of Appellee,* p. 15), the fact is that Antonio Dixon aka Tony Tucker or T. Tucker, who apparently rented from Mrs. Bell his residence at 229 Blair Street, specifically testified to the following. T. 213-214; 229

CROSS EXAMINATION BY MS. STAMPS:

Q. Mr. Dixon, you say you saw Mary Dixon and another woman around eight o'clock or nine o'clock that day?

A. Yes, ma'am.

Q. Okay. So she was with someone else?

A. Yes ma'am.

Q. Okay. And you didn't see Mary Dixon go to Melcenia Bell's home; did you?

A. No, ma'am.

Q. You didn't see her leave Melcenia Bell's home?

A. No, ma'am.

Q. And you said you saw Mary Dixon and Droopy walking along a path?

A. It's a pathway.

Q. Okay. And that's a common path?

A. Yes.

Q. A lot of people walk that path?

A. Yes.

Q. Okay. Then you later saw Ms. Dixon when she was arrested; is that correct?

A. In the police car. Yes, ma'am.

Q. In the police car. Okay. And she had on the same clothes.

A. Yeah.

T. 227-228.

On redirect examination, Dixon/Tucker merely said he did not remember the color clothing she had on – no dispute that her clothing was essentially the same. T. 230.

While the State proved beyond *any* doubt that a crime was committed, Ms. Dixon would submit that prosecutors failed to prove beyond a reasonable doubt that she committed the crime and therefore, failed to meet the standard required by *Bush v. State*, 895 So.2d 836 (Miss. 2005).

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.

The state is correct that otherwise inflammatory photographs may be considered relevant, so long as the picture serves some legitimate, evidentiary purpose under MISS.R.EVID. 401; 403. The problem with the state's argument is that Hayne used Exhibits 37, 39, 41, 43, and 44 to explain Mrs. Bell's death as a result of "multiple organ failure" and scars he testified were "consistent" with stabbing. Counsel for Ms. Dixon clearly objected to the use of the photographs on relevancy grounds at the start of Hayne's testimony. T. 401-402.

Yet Hayne was also forced to admit under cross examination that his testimony contradicted Mrs. Bell's emergency room medical records. Contrary to his testimony that the wounds on the *right* side of her body were consistent with stabbing, the record demonstrates that Hayne was forced to admit medical records showed *no* stab wounds on the right side of his body.

Despite Hayne's forced admissions as to the inconsistency of his own testimony and outright errors in identifying wounds on Mrs. Bell's body, the fact is that the crime was

horrendous and the complained-of photographs should not have been admitted into evidence. Given the paucity of evidence to connect Ms. Dixon to the crime and the admitted errors in Hayne's testimony, the use of such photographs can only be seen as an effort to inflame and prejudice the jury. Again, the issue before the jury was not whether Mrs. Bell suffered injury; she did, in a most horrible way. The issue was whether Ms. Dixon committed the crime and counsel for Ms. Dixon submits the use of the photographs was to deflect and inflame the prejudices of the jury. Upon seeing such pictures, virtually any one would demand to see *someone* pay for such a crime. Ms. Dixon submits that the jury's verdict notwithstanding, she did not commit this crime.

Ms. Dixon incorporates herein by reference all arguments and authority contained in this assignment of error in *Brief on the Merits by Appellant* and respectfully asks this Court to find prejudicial error and reverse and remand this cause.

CONCLUSION

In closing, counsel for Ms. Dixon contends she was deprived of her fundamental rights under both state and federal constitutions to due process of law and to avoid self-incrimination by the facts in evidence in this record. The statements given Deputy Pamela Turner were not knowingly, voluntarily and intelligently waived and the procedural safeguards required under *Miranda v. Arizona* and progeny were not scrupulously honored. Given the lack of physical evidence linking Ms. Dixon with the crime, these statements were of crucial importance.

Based on the arguments and authority provided herein, Ms. Dixon humbly asks this honorable Court to vacate this conviction and reverse and remand for a new trial.

Respectfully submitted,

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Certificate of Service

I, the undersigned attorney, do hereby certify that I have this day caused to be hand-delivered a true and correct copy of the foregoing REPLY BRIEF OF APPELLANT ON THE MERITS to the following:

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