

COPY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2007-KA-00770-COA

FILED

MARY DIXON

JAN 18 2008

APPELLANT

**OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS**

VERSUS

STATE OF MISSISSIPPI

APPELLEE

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

BRIEF ON THE MERITS BY APPELLANT

**OFFICE OF THE PUBLIC DEFENDER,
HINDS COUNTY, MISSISSIPPI**

William R. LaBarre, MSB No. [REDACTED]

PUBLIC DEFENDER

Alice T. Stamps, MSB No. [REDACTED]

Virginia L. Watkins, MSB. No. [REDACTED]

Assistant Public Defenders

Post Office Box 23029

Jackson, Mississippi 39225

Telephone: 601-948-2683

Facsimile: 601-948-2687

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and the judges of the Supreme Court may evaluate possible disqualification or recusal.


William R. LaBarre, Esq.,
HINDS COUNTY PUBLIC DEFENDER
Alice T. Stamps, Esq.
Virginia L. Watkins, Esq.,
Assistant Public Defenders
Post Office Box 23029
Jackson, Mississippi 39225

Honorable Robert Shuler Smith,
HINDS COUNTY DISTRICT ATTORNEY
[Honorable Eleanor Faye Peterson,
[Former District Attorney]
[Philip Weinberg Esq.
Dewey Arthur, Esq.
[Former Assistant District Attorneys]
Post Office Box 22747
Jackson, Mississippi 39225

Honorable Bobby B. DeLaughter
CIRCUIT JUDGE
Post Office Box 327
Jackson, Mississippi 39205

Mary Dixon
MDOC No115504
CMCF, CMCF WMN
Post Office Box 88550
Pearl, Mississippi 39288

So certified, this the 18th day of January, 2008.


Virginia L. Watkins, MSB No [REDACTED]
Certifying Attorney

Mary Dixon v. State of Mississippi

2007-KA-00770-COA-SCT

Table of Contents

Certificate of Interested Persons	i
Table of Contents	ii
Table of Authorities	iii
Statement of the Issues	1
Statement of the Case	2
A. Course of the Proceedings Below	
B. Statement of Facts	
Summary of the Argument	6
Argument	9
Conclusion	16
Certificate of Service	17

Mary Dixon v. State of Mississippi

2007-KA-00770-COA

Table of Authorities

<u>Cases</u>	<u>Page</u>
<i>Burnside v. State</i> , 544 So.2d 1353 (Miss. 1989)	10
<i>Bush v. State</i> , 895 So.2d 836 (Miss. 2005)	11
<i>Edmonds v. State</i> , 955 So.2d 787 (2007)	14
<i>Hunt v. State</i> , 687 So.2d 1154 (Miss. 1997)	11
<i>Miranda v. Arizona</i> , 384 U.S. 436 (1966)	4; 7; 9; 16
<i>Sudduth v. State</i> , 562 So.2d 67 (Miss. 1990)	14
<u>Constitutions, Statutes and other authorities</u>	<u>Page</u>
MISS. CODE ANN. §§97-3-19 (2)(e) (1972)	1; 11
AMEND. V, U.S. CONST.	1; 7; 9; 10; 11
AMEND. XIV, U.S. CONST.	1, 7; 9; 10; 11
Art. 3, § 14, MISS. CONST.	1; 7; 9
Art. 3, § 26, MISS. CONST	1; 7; 9
MISSISSIPPI RULE OF EVIDENCE (MRE) 401	14
MISS. R. EVID. 402	14
MISS. R. EVID. 702	14-15
<i>Mississippi Law Enforcement Officer's Handbook</i> MISSISSIPPI LAW RESEARCH INSTITUTE (2006-2007)	10

STATEMENT OF THE 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, § 14; 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, and

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 CASE

A. COURSE OF PROCEEDINGS IN TRIAL COURT

Mary Dixon was arrested in connection with the August 19, 2004 assault of Melcenia Bell, who ultimately died in December 2004, ostensibly as a direct result of the injuries suffered in the brutal attack. CP 4; T. 307; 397; 399. Ms. Dixon was indicted 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) by a grand jury of the 1st Judicial District of Hinds County, Mississippi in Cause No. 05-0-597 filed June 9, 2005. A jury composed of citizens from the First Judicial District of Hinds County, Mississippi was duly empaneled and seated on October 2, 2006; on October 5, 2006, Ms. Dixon was found guilty of capital murder and sentenced to life imprisonment in the custody of the Mississippi Department of Corrections. CP 44; 45; 46; 50; T. 514; 517; RE 12; 13.

Ms. Dixon sought review of her conviction and sentence through a post-trial *Motion for Judgment Non Obstante Verdicto or, in the alternative, a New Trial*. CP 48-49. Her motion was ultimately denied and she now prosecutes appeal of her conviction, here before this honorable Court. CP 5; 55; RE 14.

B. STATEMENT OF FACTS

The devil is in the details, and in this case, none of the details matched, from a narcotics deputy attempting to make a name for herself in a high profile case by cajoling statements from an illiterate defendant to a jailhouse informant who seems to have initially thought to scheme her way out a maximum ten-year sentence on pending forgery charges in Hinds County.

On the morning of August 19, 2004, Melcenia Bell, 93 years old, received a bath and clean clothing from Elizabeth Eubanks, who had cared for Mrs. Bell for nearly four years. T.174; As she usually did, Eubanks arrived that Thursday morning around 7 to 7:30 A.M., assisted Mrs. Bell in bathing and dressing, performed her usual chores and finally, just before leaving, poured

a soft drink for her charge and left about 9 A.M. Eubanks left the front door unlocked for “Meals on Wheels” delivery to Mrs. Bell. T. 174-175; T. 177.

Less than an hour later, Jack Tucker, driver for the Meals on Wheels program, found Mrs. Bell naked in the blood-soaked front room of her home at 827 Dreyfus Street. T. 183. Tucker called his dispatcher to summon an ambulance. When paramedic Deon LaShawn McIntosh arrived, he immediately notified his partner to summon the Jackson Police Department. T. 183-184; 190. Mrs. Bell was conscious but combative. T. 193. Not only was she bleeding profusely, her assailant left her with a screwdriver sticking out of her neck. T. 192, Exh. 3. A bloody maul or ax lay on the daybed; a bloody ice-pick and kitchen knife were also among the items recovered from the front room. T. 191; 208; 235; 241; 244. Mrs. Bell, who received income from four rental apartments behind her home, had just received a total of \$300 in rent money for the week from her tenants, plus \$475 from her son, Daryl Keith Bell, for an upcoming trip to Cleveland, Ohio. T. 213-214. She kept the cash in a pocket wallet penned to the inside of her housecoat. T. 176.

Numerous items were recovered as evidence from the gruesome crime scene, including several blood stain samples for DNA analysis and comparison and two latent fingerprints, but the evidence yielded no information to link any suspects to the crime. T. 235- 245; 258; 264; 295- 296; 310. By the time Mrs. Bell died December 12, 2004, lead Detective James Roberts had no suspects. T. 317.

Roberts had interviewed on the day of the assault several people, including Mary Dixon, Jacqueline Wallace and Tony Edwards, detained by police as persons of interest on Blair Street, directly behind the residence of Mrs. Bell at 827 Dreyfus Street. T. 312-313; 424. Officer Charmaine Valentine transported Ms. Dixon to police department offices for the interview with Det. Roberts, but before so doing, Valentine conducted a cursory “pat-down” search of Ms.

Dixon's person for safety. T. 424. The safety pat-down of Ms. Dixon at about 2 P.M. that afternoon had no money, no weapons, no screwdriver, ice-pick or any other weapon. T. 425. According to Antonio Dixon (also known as "T. Tucker" or "Tony," and no relation to Mary Dixon, the defendant), Ms. Dixon was also wearing the same clothing that afternoon as she had worn when Antonio Dixon had seen her that morning between 8 and 9 A.M., walking down a neighborhood pathway beside Melcenia Bell's home on Dreyfus Street. T. 223; 226; 228.

Det. Roberts gave Ms. Dixon the warnings required under *Miranda v. Arizona*, 384 U.S. 436 (1966) and took a statement from her in which Ms. Dixon denied involvement in the assault. T. 297-298; 306. Although Ms. Dixon did not sign the *Miranda* rights waiver form, she initialed her statement after Det. Roberts read it back to her; Ms. Dixon told Det. Roberts she could not read but could write. T. 301; 314; Exh. 32.

Under cross-examination, Det. Roberts acknowledged that analysis and comparison of the two fingerprints and numerous blood samples failed to match any known prints or other blood in the case. Further, a small spot of blood on the clothing of Ms. Dixon, recovered the day of the assault at city jail, did not match that of Mrs. Bell. T. 259; 310; 311. In fact, no blood, beyond the small spot on her pants tested by police, was found on the slippers, sweatshirt, bra or panties Ms. Dixon wore that day. T. 259; Exh. 30.

The lack of resolution to the case changed, however, on May 18, 2005, more than five months after the death of Mrs. Bell. That was the date Det. Roberts testified a Hinds County Sheriff's deputy, Pam Turner, called him to report an inmate at the Hinds County Detention Center had confessed to being present on the porch during the attack, committed by Tony Tucker – also known as Antonio Dixon. T.226; 307.

By the time Turner contacted Roberts, the detective with primary responsibility for investigating the highly publicized attack and death, she had met with Ms. Dixon no fewer than

four times – May 4; May 9; May 11 and May 16, the day Turner arranged for Ms. Dixon to take a polygraph test. T. 325-328; 330-331; 341; 342-344; 376. Only on May 9, 2005 did Turner bother to obtain a written waiver of Miranda rights, although Turner acknowledged under questioning by the trial court that she at all times had the ability to obtain such a form, that it would only take a minute and that she had “not no particular reason” for failure to obtain the waiver. T. 354; 355.

In all, the record demonstrates Turner met with Ms. Dixon at least six times, obtaining a written Miranda waiver only once, on May 9. T. 354. Turner also acknowledged she failed to obtain a written Miranda waiver even after May 16, when a sobbing Ms. Dixon refused to take a polygraph test, told Turner she wished to speak no more and wanted to return to her cell. T. 357.

Yet, Turner also testified that during this time, she permitted Ms. Dixon to talk to her children using Turner’s cellular telephone, she allowed Ms. Dixon to smoke cigarettes, that she checked Ms. Dixon out of jail May 20 to take Ms. Dixon to a McDonald’s restaurant, then on to 827 Dreyfus Street T. 384-385. Turner was allowed to testify before the jury as to the statements Ms. Dixon made throughout May 25, 2005, although she had obtained a written Miranda waiver only once, on May 11, 2005.

After her arrest on capital murder charges, Ms. Dixon was held at the Hinds County Detention Center with Charmaine Kelly, who faced uttering forgery charges in Hinds County and false pretense and conspiracy to commit false pretense charges in Pike County. T. 437. Kelly, who also admitted she shared a cell with Tony Tucker’s girlfriend, the one Ms. Dixon identified as Mrs. Bell’s assailant. T. 342. The two women had a “falling out” and Kelly decided in October 2005 to write the Hinds County District Attorney’s Office about the alleged confession Ms. Dixon gave about assaulting Mrs. Bell, taking the money to buy more crack and pulling off her clothing to make it appear as though Mrs. Bell had been sexually assaulted. T.

433-434; 436; 442. At this time, Kelly faced a maximum sentence of ten years on the forgery charge, in addition to the still-pending false pretense charges in Pike County. T. 441; 442. Kelly said that although she nothing about the notorious attack on Mrs. Bell, she had heard of Ms. Dixon before incarceration at the Hinds County Detention Center. T. 435; 436. Kelly, who said she was college-educated, also professed ignorance of the maximum sentence she faced and could not explain why she indicated on her Petition to Enter a Plea of Guilty that she has faced a prior felony when she insisted the forgery charge in Hinds County was her first time in trouble. T. 437-438; 442; 444; 446. Kelly's reason for coming forward was "I just wanted Mrs. Bell to have some justice."

Ms. Dixon in all statements maintained Tony Tucker aka Antonio Dixon attacked Mrs. Bell. All of the state's witnesses acknowledged no blood or any other physical evidence existed to tie Ms. Dixon to the blood-soaked scene at Mrs. Bell's home at 827 Dreyfus Street.

SUMMARY OF THE ARGUMENT

Mr. Dixon submits that her conviction requires reversal due to the error by the trial court in permitting into evidence statements allegedly made by Ms. Dixon to Deputy Turner, who failed to properly obtain a written waiver of Ms. Dixon's rights as outlined in *Miranda v. Arizona*, 384 U.S. 436 (1966). Thus, the statements were involuntary and permitting the jury to hear the statements deprived Ms. Dixon of her fundamental and constitutional right against self-incrimination and due process of law under AMENDS. V, XIV, U.S. CONST., and ART. 3, §§ 14; 26, MISS. CONST.

Ms. Dixon was unable to read, by her own admission to Det. James Roberts. T. 314. In his interview with Ms. Dixon on the day of the incident, she did not sign a Miranda rights waiver, although she did initial the statement Roberts typed and read back to her. T. 301; 303. Turner apparently never bothered to discover whether Ms. Dixon was literate and by her own admission obtained only one signed Miranda rights waiver form, although she also acknowledged it would have taken little time to procure additional waivers. In addition, Turner testified as to the small favors she did for Ms. Dixon, including getting her cigarettes and other small things. Turner never even bothered to contact the detective responsible for the investigation until two weeks after she first began talking to Ms. Dixon about the case and after four separate conversations, only one of which is covered by a written Miranda waiver. To accept such a diminution of such fundamental constitutional safeguards essentially swallows the principle set out by *Miranda v. Arizona*.

In addition, Ms. Dixon argues the state failed to prove the essential crime of robbery, despite the testimony of cellmate Charmaine Kelly. No physical evidence ever tied Ms. Dixon to the scene of the crime; testimony showed she was in the same clothing throughout the day and a small sample of blood taken from her pants and analyzed failed to match with that of Mrs. Bell.

The assailant of Mrs. Bell would have copious amounts of blood on their clothing, shoes and body.

Finally, Ms. Dixon submits it was an abuse of discretion to permit into evidence photographs of old injuries taken during the autopsy of Mrs. Bell. Dr. Stephen Hayne who conducted the autopsy, said he identified the scars as originating during the August 2004 attack from medical records, yet admitted he not conclusively discern if the injuries were from the attack.

For these reasons, Ms. Dixon humbly asks this honorable Court to reverse her conviction, remand her sentence and permit her a new trial with fundamental constitutional safeguards.

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.;

Ms. Dixon humbly submits that the trial court erred in finding her statements of May 4, May 9, May 11, May 16, May 20 and May 25 of 2005 were all involuntary, due to the failure of state to prove, as required by *Miranda v. Arizona*, 384 U.S. 436 (1966) and comparable state law that her statements were beyond a reasonable doubt given in a knowing, intelligent and voluntary manner. Ms. Dixon argues that the trial court erred in finding that the statements were voluntary and further erred in rejecting her motion to suppress the statements. RE 17-20; T. 368; 381; 390-391.

In a lengthy hearing in the midst of trial on the voluntariness and admissibility of the statements allegedly made by Ms. Dixon to Hinds County Deputy Pamela Turner, statements on some six occasions were at issue.

- May 4, 2005, when Turner first checked Ms. Dixon out of jail 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 record 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

In the statements given on May 16 and May 20, Turner testified that Ms. Dixon told her Tony Tucker (also known as Antonio Dixon, no relation, T. 226) committed the assault against Mrs. Bell and that she was present, smoking crack. T. 378-379. These statements came May 16, 2005, after Ms. Dixon became upset and told Turner she no longer wanted to discuss the case. T.343-344. Turner then took Ms. Dixon outside to smoke a cigarette; Ms. Dixon still wished to return to her cell and Turner said she would return a few days later to talk to her. T.343-344; 357. Nevertheless, Turner made no effort to either ascertain the literacy of Ms. Dixon, establish she had the capacity to functionally read and write, nor did Turner attempt to obtain any subsequent waiver of rights after May 16 when Ms. Dixon indicated she wished to cease speaking of the incident.

There is no question Ms. Dixon was in custody on all occasions she and Turner spoke; Turner admitted to the small favors she did for Ms. Dixon, by permitting Ms. Dixon to call her children on Turner's cellular telephone, giving her cigarettes and checking her out of jail to go eat. T. 384-385.

Furthermore, although another officer witnessed the waiver, Deputy Rebecca Pittman never appeared to testify as to the facts and circumstances of the purported May 11, 2005 waiver. Her absence was never explained.

Finally, as a trained law enforcement officer, Turner would presumably be aware of *The Mississippi Law Enforcement Officer's Handbook*, Mississippi Law Research Institute (2006-2007). In Section IX. B.2.a., the handbook states "The Miranda warnings should be given prior to any subsequent interrogation session with the person in custody even though the warnings were given in a prior interrogation."

Under *Miranda*, the Fifth and Fourteenth amendments require specific notice to the accused of rights against compelled self-incrimination and the right to confer with counsel before

speaking. Those in custody may waive such rights, usually denoted by a written waiver, but the waiver must be voluntary, and not as a result of threats, promises or other inducements; the burden remains on the prosecution to prove *beyond a reasonable doubt* that the confession was voluntary. In *Burnside v. State*, 544 So.2d 1352 at 1353-1354 (Miss. 1989) this Court reversed the conviction of Burnside when, after he signed a waiver of rights, he then sought to stop the interrogation and seek the assistance of counsel. Officers continued to question Burnside and ultimately took a statement from him, which was admitted at trial.

Ms. Dixon contends that the trial court failed to adequately evaluate the totality of the circumstances under which the statements were made as required by *Hunt v. State*, 687 So.2d 1154 (Miss. 1997) By the Turner's own testimony, she could have obtained the waivers and did not; she continued to do favors for Ms. Dixon and never even bothered to determined whether Ms. Dixon was literate and had the capacity to execute the waiver. Therefore, it is clear that the trial court's fact finding was contrary to the weight of evidence adduced during trial at the hearing on the suppression motion.

The conviction of Ms. Dixon should be reversed and remanded for a new trial in which the statements made to Deputy Turner are suppressed as they were made involuntarily, without sufficient warning or waiver, as required under AMENDS. V, VI, XIV U.S. CONST. and the Mississippi Constitution.

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

Under MISS. CODE ANN. 97-3-19(2)(e) (1972), prosecutors were required to prove that Ms. Dixon (1) killed Melcenia Bell (2) without authority of law (3) by any person engaged in the

commission of the crime of robbery or in the attempt to commit robbery. Ms. Dixon submits the state failed to adduce evidence of sufficiency and weight to show she robbed Mrs. Bell as required by law. *Bush v. State*, 895 So.2d 836 (Miss. 2005) requires that ascertainment by this Court that 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.” *Id.*, at 843-844.

Deon LaShawn McIntosh testified to the blood-soaked scene when he arrived and he and his partner spent a good deal of time cleaning all the blood from their ambulance after transporting Mrs. Bell to the University of Mississippi Medical Center. T. 191; 195. Officer Andrew McGahey, crime scene investigator, testified as to the bloody scene and the numerous blood stain samples he took – as well as later that day, all of the clothing Ms. Dixon had worn throughout the day. T. 233; 255; 259; 263. And Antonio Dixon, aka “T. Tucker” or “Tony,” testified he saw Ms. Dixon twice that day, once between 8 and 9 A.M. and again that afternoon when police were on Blair Street taking Ms. Dixon for her interview with Det. Roberts. T. 223; 226; 228. She had on the same clothing throughout the day; even McGahey testified that no blood stains were visible to the naked eye on the clothing of Ms. Dixon. T. 262. Finally, when Charmaine Valentine conducted a pat-down search before placing Ms. Dixon in her patrol car, Officer Valentine found no money, no weapons, nothing on Ms. Dixon that would indicate participation in a robbery or the assault on Mrs. Bell. T. 425.

The evidence against Ms. Dixon are statements allegedly made voluntarily to Deputy Pam Turner and in all of them, Ms. Dixon disclaims any participation in the attack or robbery of Mrs. Bell. Throughout the nearly three weeks Turner cultivated Ms. Dixon with small favors such as cigarettes and cellular telephone use, only once gaining a written Miranda rights waiver from Ms. Dixon who claimed to be unable to read. T. 314; 384-385. And there are the statements

of Charmaine Kelly, who had three convictions for crimes of dishonesty, who acknowledged a “falling out” with Ms. Dixon, rooming with Antonio Dixon/Tony Tucker’s girlfriend and writing in October 2005 the Hinds County District Attorney’s Office when she faced three pending criminal charges that Ms. Dixon had confessed to the robbery and murder of Mrs. Bell. T. 433-434; 437; 442.

Ms. Dixon would submit that given the complete lack of physical evidence to tie her to such a blood-soaked scene, the failure of Deputy Turner to adequately ascertain the literacy of Ms. Dixon and obtain appropriate waivers and the hardly credible statements of Charmaine Kelly are insufficient and lack adequate weight to tie her to the assault and subsequent death of Mrs. Melcenia Bell, it was a error and an abuse of discretion for the trial court to deny the *Motion for Judgment Non Obstante Verdicto or, in the alternative, a New Trial*.

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.

Ms. Dixon respectfully submits the use of Exhibits 38; 40 and 42 were in error and, coupled with other errors detailed herein, combined to deprive Ms. Dixon of a fair trial, free of inflammatory prejudice. T. 402. Indeed, the trial sustained Ms. Dixon’s objection on grounds of relevance to Exhibit 36 was sustained. T. 404. Prosecutors in the case used Exhibits 36; 38; 40 and 42 for identification only during the testimony of Dr. Stephen Hayne, who conducted an autopsy of Mrs. Bell. T. 394.

Ms. Dixon submits the use of the remaining Exhibits 37, 39 41; 43 and 44 were merely to inflame the jurors at the brutality of such a crime to one so vulnerable as Mrs. Bell. Dr. Hayne,

in pronouncing “multiple organ failure” as the cause of a death he labeled homicide, pointed out numerous scars he testified were “consistent” with stabbing. Yet Hayne also was forced to admit the inconsistency of his testimony and review of the pictures with Mrs. Bell’s emergency room medical records. T. 417. Hayne was also forced to acknowledge under cross-examination that medical records show none of the stab wounds were on the right side of her body, as opposed to Hayne’s conclusions that scars depicted in Exhibits 43 and 44, pictures of the *right* side of Mrs. Bell’s body, were consistent with the type of injuries received in the same sort of attack Mrs. Bell suffered. T. 410-411.

Ms. Dixon submits the photographs were not necessary to identify Mrs. Bell, both Elizabeth Eubanks and Daryl Keith Bell had done so early in the trial. T. 173; 208.

A review of our case law reveals that the admission of photographs into evidence is within the discretion of the trial judge, and such admission will be upheld on appeal absent a showing of an abuse of that discretion. “However, photographs of the victim should not ordinarily be admitted into evidence where the killing is not contradicted or denied, and the corpus delicti and the identity of the deceased have been established.” *Sudduth v. State*, 562 So.2d 67, 69 (Miss. 1990) [internal citations omitted].


Ms. Dixon would assert that under MISSISSIPPI RULE OF EVIDENCE 401, at least Exhibits 43 and 44 were irrelevant to testimony of the cause of Mrs. Bell’s death because her medical records indicate no wounds were located there. Yet, Dr. Hayne continued to postulate before the jury that the scars depicted in those exhibits were consistent with the sort of injury one would sustain in a similar assault. This is not unlike the testimony of Dr. Hayne in the case of *Edmonds v. State*, 955 So.2d 787, ¶¶ 7-10 in which Dr. Hayne testified to the jury his autopsy findings showed that Edmonds, a slightly-built teen, and his sister, both pulled the trigger on the rifle to kill Edmonds’ brother-in-law. While the Court’s ruling in *Edmonds* was based on MISS. R.EVID.

CONCLUSION

Counsel for Ms. Dixon respectfully submits the errors presented herein demonstrate that she did not knowingly, voluntarily and intelligently waive her protections under *Miranda v. Arizona*, supra, and thus, the trial court was in error to admit statements ostensibly given to Deputy Turner. Furthermore, the lack of physical evidence linking Ms. Dixon with the crime scene is a crucial omission in a chain to tie her to the assault and death of Mrs. Bell. Finally, Ms. Dixon was deprived of her right to a fair and impartial trial by the admission of photographs and testimony from Dr. Stephen Hayne regarding the origin of scars on the body of Mrs. Bell, which was inconsistent with medical records documenting wounds on the right side of her body. These photographs were irrelevant and were admitted solely to inflame the jury against Ms. Dixon and deprive her of her right to a fair and impartial trial.

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

Respectfully submitted,


Virginia L. Watkins, MSB No. [REDACTED]
Assistant Public Defender

PUBLIC DEFENDER, HINDS COUNTY, MISSISSIPPI

William R. LaBarre, MSB No. [REDACTED]

PUBLIC DEFENDER

Alice T. Stamps, MSB No. 8773

Virginia L. Watkins, MSB No. [REDACTED]

Assistant Public Defenders

Post Office Box 23029

Jackson, Mississippi 39225

Telephone: 601-948-2683

Facsimile: 601-948-2687

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 BRIEF OF APPELLANT ON THE MERITS to the following:

Honorable James Hood III
ATTORNEY GENERAL
Charles W. Maris Jr.
Assistant Attorney General
Carroll Gartin Justice Building
Post office Box 220
Jackson, Mississippi 39205-0220


Honorable Robert Shuler Smith,
DISTRICT ATTORNEY
Hinds County Courthouse
Post Office Box 22747
Jackson, Mississippi 39225

Honorable Bobby B. DeLaughter
CIRCUIT JUDGE
Hinds County Courthouse
Post Office Box 327
Jackson, Mississippi

And by United States Mail, postage prepaid, to

Mary Dixon, MDOC No115504
CMCF, CMCF WMN
Post Office Box 88550
Pearl, Mississippi 39288

So certified, this the 18th day of January 2008.


Virginia L. Watkins, MSB No. [REDACTED]
Certifying Attorney