IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

WANDA LEONA BLAKENEY — APPELLANT

VS. — NO. 2007-KA-2300

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

The grand jury of Jones County, 2nd Judicial District indicted defendant, Wanda Leone Blakeney with two counts of Murder in violation of *Miss. Code Ann.* § 97-3-19(a)(a). (Indictment, cp.3-4). After a trial by jury, Judge Billy Joe Landrum presiding, the jury found defendant guilty on both counts. (C.p.43). Defendant was sentenced to Life on each count, consecutive to each other, in addition to court costs, restitution and assessments. (Sentence orders, cp. 46-49).

STATEMENT OF FACTS

Defendant and her husband conspired to kill her adoptive parents -- her natural grandparents. They choked them and stunned them with a taser until they were dead. The put the bodies in their car, (seat belted them in) ran it off a road, down an embankment and into the tree line. The car had fireworks, charcoal lighter fluid and cans of gasoline. They started the car on fire. When law enforcement arrived they quickly became suspicious... The jury heard the evidence, defendant testified in her defense and the jury found her guilty of both murders .

SUMMARY OF THE ARGUMENT

I.

THE TRIAL COURT DID NOT ERR IN DENYING THE MOTIONS FOR DIRECTED VERDICT AND NEW TRIAL.

II.

THE VERDICT IS NOT AGAINST THE WEIGHT OF THE EVIDENCE.

III.

THERE IS NO ERROR CLAIMED WITH SUFFICIENT CLARITY TO JUSTIFY ANY RELIEF.

IV.

DEFENDANT WAS NOT IN CUSTODY AND MIRANDA DOES NOT APPLY.

V.

THE CLAIM OF CUMULATIVE ERROR IS WITHOUT MERIT.

ARGUMENT

I.

THE TRIAL COURT DID NOT ERR IN DENYING THE MOTIONS FOR DIRECTED VERDICT AND NEW TRIAL.

In this initial allegation of trial court error defendant seeks to have this reviewing court reverse and render the conviction or remand for a new trial. As a basis for such relief defendant asserts the State added an element to the offense in the indictment and then didn't prove that element. Specifically, the indictment reads that the victims (both) were killed by 'suffocating'. Counsel now, as at trial, asserts the proof by expert testimony was that the victims died by 'manual strangulation'. Tr. 213. Counsel for defendant claims the State failed to prove they died from suffocation.

It is the position of the State that indictment, even though it held the deaths to be by suffocation, was proved with the expert testimony of strangulation, specifically manual strangulation. It is the contention of the State that the terms are, for all intents and purposes synonymous. One being the cause of death (suffocation) and the other the manner (manual strangulation).

The courts of this State have oft combined the words suffocation and strangulation in describing the facts of cases or the cause and manner of death. *Loden v. State*, 971 So.2d 548, 551 (Miss. 2007)(suffocation and manual strangulation); *Rubenstein v. State*, 941 So.2d 735, 749-750 (Miss. 2006) (strangulation, choked, or

suffocation); *Cabello v. State*, 471 So.2d 332, 349 (Miss. 1985)(suffocated or strangled); *Burns v. State,* 87 So.2d 681, 682 (Miss.1956)(strangulation or suffocation).

It is the succinct position of the State that though surplusage, the State did prove suffocation by strangulation. There being no error by the trial court in the denial of the motions the State would ask that no relief be granted on this allegation of error.

II.
THE VERDICT IS NOT AGAINST THE WEIGHT OF THE EVIDENCE.

Next, defendant challenges the weight and credibility of the evidence. Not in particular – but overall, in general.

The standard of review on such a broad claim, to wit:

> ¶ 20. We first examine Roberson's motion for a JNOV. On appeal, "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.' " Bush v. State, 895 So.2d 836, 843(¶ 16) (Miss.2005) (quoting Carr v. State, 208 So.2d 886, 889 (Miss.1968)). A motion for a JNOV requires the trial judge "***to accept as true all of the evidence that is favorable to the State, including all reasonable inferences that may be drawn therefrom, and to disregard evidence favorable to the defendant.***" Wooten, 752 So.2d at 1108(¶ 6). If the evidence is sufficient to support the guilty verdict under this standard, the motion is properly refused. Id. On the other hand, if the evidence favors the defendant on any element of the offense to the extent that "reasonable men could not have found beyond a reasonable doubt that the defendant was guilty," the motion must be granted. Edwards v. State, 469 So.2d 68, 70 (Miss.1985).
>
> *Roberson v. State*, 2009 WL 447401 (Miss.App. 2009)(***Emphasis added)***.

There was evidence that Wanda knew and conspired, in advance, what was going to happen. Tr. 85. The very facts of Wanda's quick and easy assistance and involvement belies her assertions of innocence.

The story of the defendant is quite fantastic and implausible. The law

recognizes such and it does not mean defendant is entitled to prevail on review.

> ¶ 12. Moreover, "[a] mere fanciful or farfetched or unreasonable hypothesis of innocence is not sufficient to require an acquittal."
>
> *Staten v. State* , 989 So.2d 938, 944 (Miss.App. 2008).

The horrors and screams as evident from the photos in evidence clearly imply far more than one scream. It is a reasonable and plausible inference that defendant's husband strangled them while this defendant shot them repeatedly with the taser. It is also reasonable that her story of her husband bringing her the 'taser' to touch, was an attempt to explain her fingerprints if found on the taser.

To be sure there was more than ample weighty evidence to support the jury verdicts.

No relief should be granted on this allegation of error.

III.
THERE IS NO ERROR CLAIMED WITH SUFFICIENT CLARITY TO JUSTIFY ANY RELIEF.

In this allegation of error counsel argues it was error for failing to redact what defense claims are prejudicial statements. The only claim of error is a citation to the record, some 10 days before trial to redact or suppress one of the videos or portions thereof.

The State has two DVD's introduced as exhibits. Ex. 37, admitted, apparently without objection at pages 154/55 and Ex. 41 admitted, apparently, without objection at page 189 of the transcript. The total viewing time of these two DVD's is close to two hours. Now, on appeal, with full access to the record and exhibits there is not one indication as to which exhibit, or exactly what statements within those many minutes prejudiced this defendant.

First of all there was the weighing of the trial court that the tape would be of more probative value than the prejudicial effect. Tr.8. Defendant has not now on appeal presented any citation to the record or any facts, or any statement that overcome the correctness of the trial courts ruling on this evidentiary question.

> This Court presumes that the judgment of the trial court is correct and the appellant must "demonstrate some reversible error to this Court."
>
> *Jordan v. State,* 995 So.2d 94, 103 (Miss. 2008).

Also, other than that pre-trial motion 10 days prior to trial there does not appear

to be a contemporaneous objection raised at the time of introduction of the tapes, DVD's, or statements.

> Further, when each item of evidence was presented at trial, Jones failed to renew his motion or object to its admittance. It is well-settled law in Mississippi that failure to make a contemporaneous objection regarding the admission of evidence at trial waives the argument for purposes of appeal.
>
> *Jones v. State*, 993 So.2d 386, 391 (Miss.App. 2008).

Concluding, no relief should be granted on this allegation of trial court error.

IV.
DEFENDANT WAS NOT IN CUSTODY AND MIRANDA DOES NOT APPLY.

In this penultimate allegation of trial court error defendant asserts it was error for the trial court to let the prosecution show a video of the initial interview with defendant when she was not *Mirandized.*

This issue was presented to the trial court as a motion in limine to suppress the video. One of the officers present at the interview took the stand and was cross-examined. The trial court ruled the tape was of probative value going to defendant's credibility and denied the motion. Tr. 31-38.

It is worth noting that defendant cites *Hopkins v. State*, 799 So.2d 874 (Miss. 2001) as authority for relief. Counsel has misread the case and applicability to the case sub judice.

In *Hopkins* there were two situations when police questioned the defendant. Once on the roadside and a second time at the hospital. The court held the 'roadside' questioning was non-custodial and *Miranda* not implicated. The second interview – at the hospital – was custodial and implicated *Miranda.*

We have a similar situation. The first interview was non-custodial and this defendant was released. No *Miranda* issue. Second interview, this defendant was *Mirandized.* Under the rationale of *Hopkins* the first statement would be admissible

– for whatever purpose, direct evidence or impeachment.

Consequently, based upon the evidence presented at the hearing on the motion in limine and the ruling of the trial court there was no error and no relief should be granted.

V.
THE CLAIM OF CUMULATIVE ERROR IS WITHOUT MERIT.

Lastly, it is asserted the cumulative effect of multiple mistakes requires an order of acquittal or a new trial. Fortunately, it is the position of the State this heinous killer is not even remotely entitled to either.

> ¶ 31. At the outset, we note that "the Constitution does not guarantee a perfect trial, but it does entitle a defendant in a criminal case to a fair trial." Hammons v. State, 918 So.2d 62, 65(¶ 10) (Miss.2005) (citing Clark v. State, 891 So.2d 136, 140-41(¶ 19) (Miss.2004)). Therefore, Carlisle's trial did not have to be perfect in order to be valid. However, the Mississippi Supreme Court has held that "individual errors, not reversible in themselves, may combine with other errors to make up reversible error." Caston v. State, 823 So.2d 473, 509 (¶ 134) (Miss.2002). The Court further noted that:
>
> > [t]he question that must be asked in these instances is whether the defendant was deprived of a 'fundamentally fair and impartial trial' as a result of the cumulative effect of all errors at trial. If there is 'no reversible error in any part, so there is no reversible error to the whole.'
> >
> > Id. (citations omitted).
>
> Carlisle v. State, 936 So.2d 415 (Miss.App. 2006).

While numerous allegations of error are presented it is the position of the State that singly or collectively they do not rise to a level that defendant was deprived of a fundamentally fair trial.

No relief should be granted on this allegation of cumulative error.

CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal the State would ask this reviewing court to affirm the verdicts of the jury and sentencing of the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jeffrey A. Klingfuss, 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:

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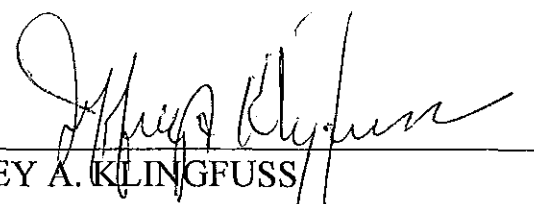
This the 6th day of March, 2009.



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