

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CASE NO. 2007-KA-02300

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WANDA LEONA BLAKENEY

APPELLANT

VERSUS

STATE OF MISSISSIPPI

APPELLEE

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Appeal from the Circuit Court of the  
Second Judicial District of Jones County, Mississippi

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**REPLY BRIEF OF APPELLANT**

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ORAL ARGUMENT NOT REQUESTED

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**I. WHETHER THE TRIAL COURT ERRED IN DENYING WANDA LEONA BLAKENEYS'S MOTION FOR DIRECTED VERDICT AND/OR NEW TRIAL?**

In first issue raised in Appellant's Principal Brief, the Appellant argues that the surplusage in the indictment claiming that the victims were killed by suffocation was different than the testimony of the State's expert offered at trial claiming that the manner of death was by "manual strangulation". Tr. at 213. Counsel for the State now argues that the two have the same meaning and so the surplusage contained in the indictment was proven sufficiently; however, the Appellant vehemently disagrees with this assertion. Strangulation is defined as: "to constrict (a tube, herniated organ, etc.) so as to cut off a flow, especially so as to cut off circulation of the blood." See Webster's New College Dictionary (2007). Suffocation is defined as: "to kill by cutting off the supply of oxygen to the lungs, gills, etc." Also see, Webster's New College Dictionary (2007). The Appellant would show unto to the court that these words do, indeed have different meanings, rather than being interchangeable as the State would attempt to lead this court to believe. As the shown by the above cited definitions, the death of a person by "manual strangulation" does not require that they had suffocated as is asserted in the State's brief.

In short, one can be killed by strangulation and not suffocate, therefore, the State's expert's testimony that the deaths herein were by "manual strangulation" does not equate to the testimony that deaths of Willie and Anita Kitchens were by suffocation. The Supreme Court of Mississippi has also recognized the difference between strangulation and suffocation contrary to the State's claims. *Merritt v. State* 339 So.2d 1366, 1367 (Miss. 1976). In *Merritt v. State*, the Court recognized that suffocation and strangulation are two different and distinct manners

of death. *Id.* Given that the State has conceded that ‘suffocation’ in the indictment is surplusage and that the two words have different and distinct meanings and are not interchangeable, the surplusage was not proven as required by law and is reversible error.

### **III. WHETHER THE TRIAL COURT ERRED IN FAILING TO REDACT POTENTIALLY PREJUDICIAL STATEMENTS FROM THE THIRD TAPE SHOWN TO THE JURY AT TRIAL?**

In the third issue raised on appeal, there is the issue of some potentially prejudicial statements made on a DVD played in open court at the trial of the Appellant. The State in its brief misrepresents certain important facts to the Court. First, the State alleges that there was no objection raised to the admissibility of the DVDs played at trial, when in fact there was a continuing objection raised as to the admissibility of the DVDs. Tr. at 149. Secondly, the State erroneously asserts in its brief to this Court that “[t]he only claim of error is a citation to the record, some days before trial to redact or suppress one of the videos or portions thereof.” See Appellee’s Brief at p. 8.

The State alleges that the two DVD’s introduced as exhibits at trial were admitted without objection by the defense. Trial counsel for the Appellant made a proper motion to redact portions of the interviews with the Appellant which was heard and denied by the trial court approximately ten days before trial. Tr. at 6-8. This objection was subsequently renewed at trial and Appellant’s trial counsel made a continuing objection to this in accordance with the motion to redact certain parts of the interview with Appellant. Tr. at 149.

The State in its brief further states that “...there is not one indication as to which exhibit, or exactly what statements within those many minutes prejudiced this defendant.” See Appellee’s Brief at p. 8. The Appellant in her principal brief identifies what statements are hearsay and prejudicial, as follows:

Following the murder of the Willie Kitchens and Anita Kitchens, Wanda Leona Blakeney was interviewed at the Jones County Sheriff's Department and there were three video recordings of those interviews introduced into evidence at trial. During one of these tapes the interviewer claimed that Wanda Leona Blakeney's husband, who was also a suspect in the case, had confessed to law enforcement and had claimed that Wanda Leona Blakeney had committed the crime with him. [T. at 6-8]. Not only was this statement hearsay under the definition provided in Rule 801(c) of the Mississippi Rules of Evidence, but the probative value of the portion of the statement is significantly outweighed by the prejudicial nature of the statements contained therein, and the motion to suppress the statements made in that section of the video or redact the sections was improperly overruled by the trial judge.

The aforementioned DVD's are part the record in this appeal; however, as stated by the State in its brief the total viewing time of the two DVDs is close to two hours. See Exhibits S-37 and S-41. It is important to note that content of the DVD's were not transcribed by the Court Reporter in the trial court, so there is no transcript or record to cite to herein except as previously cited and stated herein in the Appellant's Principal Brief.

In the present case, the statements made by the interviewer were not redacted or suppressed, there was also no limiting instruction given before the tape was viewed by the jury as to the hearsay statements made by the interviewer. Clearly, the Appellant was prejudiced by the failure of the trial court to redact or suppress the hearsay statements contained in the third DVD.

**II. WHETHER THE VERDICTS WERE CONTRARY TO THE  
OVERWHELMING WEIGHT OF THE EVIDENCE?**

**IV. WHETHER THE TRIAL COURT IMPROPERLY ADMITTED A  
VIDEOTAPED INTERVIEW WHERE WANDA LEONA BLAKENEY WAS  
NOT MIRANDIZED?**

**V. WHETHER THE CUMMULATIVE EFFECT OF THE COMBINED ERRORS  
IN THE TRIAL COURT WARRANTS REVERSAL?**

That Appellant as to all of the matters raised on appeal in Issues II, IV and V of her Principal Brief, the Appellant stands on the authorities cited and arguments made therein.

**CONCLUSION**

For all of the above and foregoing reasons set forth herein and in the Appellant's Principal Brief, the Appellant Wanda Leona Blakeney respectfully requests that she be granted the relief to which she is entitled and to have her convictions reversed and rendered, or in the alternative, granted a new trial.

**RESPECTFULLY SUBMITTED**, this the 17<sup>th</sup> day of March, 2009.

**WANDA LEONA BLAKENEY  
APPELLANT**

BY: 

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**DANIEL D. WARE  
ATTORNEY FOR APPELLANT**

**CERTIFICATE OF SERVICE**

The undersigned counsel of record for the Appellant Wanda Leona Blakeney, hereby certifies that true and correct copies, electronic and paper, of the Appellant's Brief were delivered via U.S. Mail to the following addresses:

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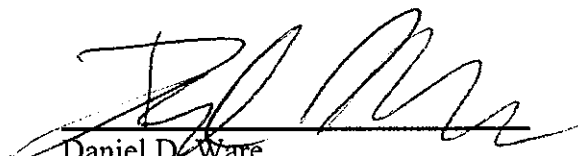
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