

IN THE SUPREME COURT 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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**BRIEF OF APPELLANT**

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ORAL ARGUMENT NOT REQUESTED

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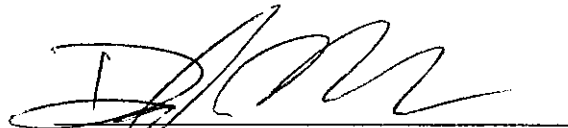
APPELLEE

**CERTIFICATE OF INTERESTED PARTIES**

The undersigned counsel of record certifies that the following listed persons and entities as described in Rule 28(a)(1) have an interest in the outcome of this case. These representations are made in order that the Justices for the Supreme Court of Mississippi may evaluate possible disqualification or recusal.

1. Appellant Wanda Leona Blakeney;
2. The State of Mississippi, Appellee;
3. Daniel D. Ware, counsel on appeal for Appellant;
4. Michael D. Mitchell, trial counsel for Appellant;
5. Honorable Anthony J. Buckley, District Attorney of Jones County;
6. Honorable Charles Maris, Assistant Attorney General;
7. Honorable Billy Joe Landrum, Jones County Circuit Court Judge.

Respectfully submitted, this the 26<sup>th</sup> day of November, 2008.



Daniel D. Ware  
Attorney for the Appellant

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## **STATEMENT OF THE ISSUES**

The Appellant Wanda Leona Blakeney raises the following issues on appeal:

- I. WHETHER THE TRIAL COURT ERRED IN DENYING WANDA LEONA BLAKENEY'S MOTION FOR DIRECTED VERDICT AND/OR NEW TRIAL?
- II. WHETHER THE VERDICTS WERE CONTRARY TO THE OVERWHELMING WEIGHT OF THE EVIDENCE?
- III. WHETHER THE TRIAL COURT ERRED IN FAILING TO REDACT POTENTIALLY PREJUDICIAL STATEMENTS FROM THE THIRD TAPE SHOWN TO THE JURY AT TRIAL?
- 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?

## **STATEMENT OF THE CASE**

This is an appeal from the Circuit Court of the Second Judicial District of Jones County, Mississippi wherein Wanda Leona Blakeney was convicted on two counts of murder in jury trial conducted November 19-20, 2007, before the Honorable Billy Joe Landrum, Jones County Circuit Court Judge. Wanda Leona Blakeney was indicted for two counts of murder by the Grand Jury of the Second Judicial District of Jones County, Mississippi and found guilty at trial on both counts and was sentenced to life in prison with said sentences to run consecutively. Currently, Wanda Leona Blakeney is incarcerated in custody of the Mississippi Department of Corrections. Aggrieved by the verdict and sentence in the trial court, Appellant Wanda Leona Blakeney timely appeals her convictions and sentences to this Court.

## **FACTS**

About 4:45 a.m. on July 10, 2006, State Trooper Holt Ross received a call from the Hattiesburg Mississippi Highway Patrol District Office informing him that there had been an accident on U.S. Highway 84, west of Waynesboro and he arrived at the scene at 5:28 a.m. [T. at 45]. Officer Ross spotted a vehicle about 300 feet down an embankment on the south side of U.S. Highway 84 and the vehicle in question was just inside the wood line. [T. at 46]. The vehicle that Officer Ross discovered was the Nissan Sentra of Willie and Anita Kitchens with their bodies inside. [T. at 47-48]. Ross noted that there was no serious damage to the car, particularly not enough to kill either of the occupants. *Id.* The vehicle was filled with smoke from burned out fireworks in the back seat that had been set off. *Id.* Trooper Ross found two containers of gasoline in the trunk and containers of lighter fluid in the car. [T. at 50, 55].

Willie and Anita Kitchens lived at 11 Bell Road with their natural granddaughter (adopted daughter) Wanda Leona Blakeney, her husband John Christopher Blakeney and their two children. [T. at 59-60]. At about 5:20 a.m. Wanda Leona Blakeney called Carolyn McCree

(her birth mother) and told Carolyn that she needed to come to the 11 Bell Road house. [T. at 63-64]. Upon Carolyn's arrival at the 11 Bell Road house, Wanda Leona Blakeney told Carolyn that John Christopher Blakeney had killed and taken off with Willie and Anita Kitchens. [T. at 64-65]. Wanda Leona Blakeney then called 911 to report the matter and law enforcement was dispatched to the 11 Bell Road house. [T. at 66-68] Upon examination of the residence it was discovered that several pieces of "confetti" (which were later determined to come from a taser [T. at 115-117]) were present in the bedroom of Willie and Anita Kitchens and that there were no linens on their bed. [T. at 106-107].

The bodies of Willie and Anita Kitchens were determined to have died a violent death and there were burn marks discovered on the bodies consistent with those created when a taser is used. [T. at 129-131, 139]. The Kitchens' were determined to have died from manual strangulation. [T. at 133]. It was also noted that there was a struggle with both Mr. and Mrs. Kitchens, but more of a struggle took place with Mr. Kitchens. [T. at 146-147].

Some time before 7:30 the morning the Mr. and Mrs. Kitchens were killed Wanda Leona Blakeney was interviewed by Officer Matt Ishee at the Jones County Sheriff's Office. [T. at 155]. Wanda Leona Blakeney's initial interview at the sheriff's office was about thirty minutes long and videotaped. *Id.* Approximately three days after the first interview Wanda Leona Blakeney was interviewed a second time by Matt Ishee. In this interview she was Mirandized whereas in the first interview she was not. [T. at 177].

During investigation it was learned that Wanda Leona Blakeney had taken approximately \$20,000 from an account bearing her name and the names of Willie and Anita Kitchens, she also testified that she was making arrangements to return the money to the account. [T. at 228]. Wanda Leona Blakeney went on to testify that she had no knowledge of her husband Chris Blakeney planning to kill Willie and Anita Kitchens and she was only aware



of it during and after the fact. She testified that it was not her wish that Willie and Anita Kitchens be killed and that fear of her safety and the safety of her children were the only motivating factors that caused her to aid in the removal of the bodies. [T. at 222-227].

### **SUMMARY OF THE ARGUMENT**

Wanda Leona Blakeney was not proven guilty beyond a reasonable doubt at trial on either count of murder. The state added a superfluous element of proof in the indictment and failed to prove the indictment as submitted, which is required by law. A directed verdict should have been granted as the state failed to meet the required burden of proof on both counts as alleged by the indictment. The overwhelming weight of the evidence in the record does not support the conviction of Wanda Leona Blakeney for the murders of Willie and Anita Kitchens. The trial court committed reversible error and abused its discretion in allowing overly prejudicial hearsay video evidence to be admitted. The trial court also committed reversible error and abused its discretion by allowing into evidence a video interview of Wanda Leona Blakeney in which she was un-Mirandized and which violated her constitutionally protected right against self-incrimination. The cumulative effect of the errors in the trial court clearly creates reversible error.

### **ARGUMENT**

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

At the close of the State's case-in-chief trial counsel for Blakeney made a motion for directed verdict based upon the fact that Blakeney had been charged in the indictment with two counts of murder and said indictment in both counts stated that the murders occurred by suffocation. [T. at 211-214]. The motion was denied by the trial judge. [T. at 214]. The motion for directed verdict was again renewed and denied at the close of all evidence. [T. at 269]. In

criminal cases, defendants have a constitutionally protected right to be informed of the nature and cause of charges brought against them. U.S. Const. amend. VI & XIV; Miss. Const. art. 3, § 26; *Jones v. State*, 856 So.2d 285, 289 (Miss.2003). Thus an indictment is required to describe with precision and certainty each element of the offense charged in said indictment. *Peterson v. State*, 671 So.2d 647, 653 (Miss.1996) (citations omitted).

Rule 7.06 of the Uniform Rules of Circuit and County Court concerning indictments states that:

The indictment upon which the defendant is to be tried shall be a plain, concise and definite written statement of the essential facts constituting the offense charged and shall fully notify the defendant of the nature and cause of the accusation. Formal and technical words are not necessary in an indictment, if the offense can be substantially described without them. An indictment shall also include the following:

1. The name of the accused;
2. The date on which the indictment was filed in court;
3. A statement that the prosecution is brought in the name and by the authority of the State of Mississippi;
4. The county and judicial district in which the indictment is brought;
5. The date and, if applicable, the time at which the offense was alleged to have been committed. Failure to state the correct date shall not render the indictment insufficient;
6. The signature of the foreman of the grand jury issuing it; and
7. The words "against the peace and dignity of the state."

The court on motion of the defendant may strike from the indictment any surplusage, including unnecessary allegations or aliases.

This Court, however, has held that the State is required to prove an unnecessary element alleged in the indictment. *Richmond v. State*, 751 So.2d 1038, 1046 (Miss. 1999). In the present case, the indictment states in both counts that the murders took place by suffocation. [R. at 3]. The State's own witness Dr. Steven Hayne testified at trial that both Willie Kitchens and Anita Kitchens died as a result of "manual strangulation". [T. at 133-135].

In this case, the State added the words “by suffocation” into the indictment and thus “...handicapped itself through the indictment by adding an unnecessary element of proof.” 751 So.2d at 1046. No other evidence or testimony was offered by the State at trial to prove the deaths were a result of suffocation. Furthermore, at no time did the State ever request to remove the “by suffocation” language from the indictment. The State failed to prove as required that the deaths of Willie Kitchens and Anita Kitchens were a result of suffocation as alleged in the indictment. As the *Richmond* decision remains authority in cases where the indictment includes surplusage which was not removed prior to trial, Blakeney’s conviction should be reversed and an acquittal should be rendered by this Court. *Id.*; See also *Lee v. State*, 944 So.2d 35 (Miss. 2006). Alternatively, Wanda Leona Blakeney should be granted a reversal and these matters be remanded for a new trial.

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

The evidence presented by the State against Wanda Leona Blakeney at trial is circumstantial at best. There were no eye witnesses, no physical evidence at best she is an accessory after the fact in the deaths of Willie Kitchens and Anita Kitchens. [T. at 224] The State failed to produce any witnesses or direct evidence that the Defendant herein, Wanda Leona Blakeney entered into an agreement with her abusive husband John Christopher Paul Blakeney to murder Willie Kitchens and Anita Kitchens, her adoptive parents and natural grandparents. [T. at 227]. The State has only proven that Blakeney helped to clean up the crime scene after the murders had occurred. [T. at 224]. Blakeney took the witness stand and testified in her own defense and vehemently denied that she was present when the murders occurred or that she had any part in neither the planning nor carrying out the murders. [T. at

222, 227.] The State presented no credible evidence contradicting the testimony of Wanda Leona Blakeney.

This Court must reverse a jury's verdict that "is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice." *Bush v. State*, 895 So.2d 836, 844 (Miss.2005); See also *Miller v. State*, 983 So.2d 1051 (Miss. 2008), *Simmons v. State*, 722 So.2d 666, 674 (Miss.1998). A miscarriage of justice will result if the guilty verdicts are allowed to stand against Wanda Leona Blakeney.

The jury's verdict of guilty as both counts of the indictment as to Wanda Leona Blakeney are contrary to the evidence presented at trial and requires this Honorable Court to reverse both of her convictions and to render an acquittal on both counts, or in the alternative to reverse the convictions and order a new trial. *Gilpatrick v. State*, 991 So.2d 130, 134 (Miss. 2008), *Hughes v. State*, 983 So.2d 270, 275-276 (Miss. 2008), *Brown v. State*, 829 So.2d 93, 103 (Miss. 2002).

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

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.

In *Ivy v. State*, 641 So.2d 15, 18 (Miss. 1994), this Court stated that although it is at the trial court's discretion as to which statements are more probative than prejudicial, "the discretion of the trial judge must be exercised within the boundaries of the Mississippi Rules of Evidence." *Id.* at 18. The proper method of determining whether a particular piece of evidence is more probative than prejudicial is using the Rule 403 balancing test. *Foster v. State*, 508 So.2d 1111 (Miss. 1987) In present case, the trial court asserted that it was going to perform a balancing test but then preliminarily denied the motion to suppress the evidence in question, and this preliminary ruling was not changed. [T. at 8].

While the record does not explicitly show the trial court performing the test, case law suggests that not performing the test is not in itself harmless error. *Havard v. State*, 928 So.2d 771 (Miss. 2006). The *Havard* decision only determines that failing to show a performance, or failing the actual performance of the balancing test was harmless error in the case of a picture that was used for identification purposes only, which is obviously distinguishable from the facts here because the statements made by the interviewer were, for all the jury knew, the truth, and not used for something as innocuous as identification. *Id.* at 797.

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 statements made by the interviewer. Clearly, Wanda Leona Blakeney was prejudiced by the failure of the trial to redact or suppress the hearsay statements contained in the third tape.

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

The first of the videotaped interviews with Wanda Leona Blakeney was one in which the Jones County Sheriff's Department claims at the beginning of the interview that Wanda Leona Blakeney was not a suspect and therefore was not Mirandized. This thirty minute video was improperly admitted into evidence and is in violation of appellant's constitutionally protected rights. The case of *Miranda v. Arizona*, 86 S.Ct. 1602 (1966), the U.S. Supreme Court stated that in order to protect the Fifth Amendment right against self-incrimination the person being questioned must be informed of their rights and must intelligently waive those rights, or the statements cannot be used in a court of law.

The law in Mississippi clarifies that the individual must be in custody for the Miranda decision to carry weight. *Hopkins v. State*, 799 So.2d.874 (Miss. 2001). The prosecution at trial averred that Wanda Leona Blakeney was not in custody because she was not handcuffed and could have, in theory, walked out at any time during the first thirty minute tape in question when she was not Mirandized. In *Hopkins*, the un-Mirandized interview in question was taken at the scene of the accident in the case. *Id.* at 876-877. The situation in *Hopkins* is a very different situation than the one presented in the instant case. *Id.* Wanda Leona Blakeney was in the Sheriff's Department and presumably there were several law enforcement officers in the immediate area when the interview was conducted [T. at 33-37]. In addition to the difference in surroundings, an open roadway compared to the interior of a Sheriff's Department, the interview conducted in *Hopkins* was a few casual questions compared to a recorded thirty minute interrogation of Wanda Leona Blakeney. *Id.* at 876-877; [T. at 37].

In addition to the differences between the controlling case law and the situation at hand, there is an admission in the record that Wanda Leona Blakeney became a suspect during the

interview in question: "She became a suspect during the interview, correct, and she was read her rights at that time." [T. at 36]. If she was Mirandized later, then the part of the interview in which she was not Mirandized should be excluded. The purpose for which the tape was supposed to be admitted was to show the demeanor of Wanda Leona Blakeney at the time of the interview, this could have been done in some other way than using thirty minutes of un-Mirandized statements which served only to prejudice Wanda Leona Blakeney in the eyes of the jury.

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

While any one of the above errors cited herein alone may not be enough to merit reversal, the cumulative effect of all of the errors combined in the trial court deprived Wanda Leona Blakeney of a fair trial. The Mississippi Supreme Court has found that if, as in the case at hand, the multiple smaller errors committed by the trial court, any one of them harmless in itself, combine to deprive the individual of a fair trial then it is cumulative error, i.e. reversible error. *Hansen v. State*, 592 So.2d 114 (Miss. 1991); *Griffin v. State*, 557 So.2d 542, 553 (Miss. 1990); *Wilburn v. State*, 608 So.2d 702 (Miss. 1992). As shown herein the numerous errors during the trial of this matter have a cumulative effect which deprived Wanda Leona Blakeney of a fair trial and warrants reversal of her convictions and acquittal on both counts of the indictment, or in the alternative a new trial.

**CONCLUSION**

For all of the above and foregoing reasons set forth herein, Wanda Leona Blakeney is clearly entitled to have her convictions reversed and rendered, or in the alternative she is

entitled to a new trial.

**Respectfully Submitted**, this the 26th day of November, 2008.

**WANDA LEONA BLAKENEY  
APPELLANT**

BY: 

**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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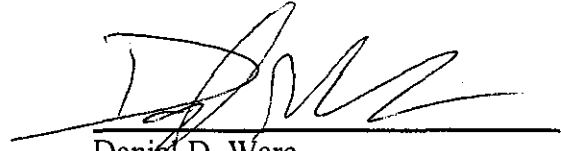
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