

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

WILLIAM DEWAYNE SAVELL a/k/a DEWAYNE SAVELL

APPELLANT

VS.

NO. 2010-CP-1866-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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BRIEF FOR THE APPELLEE

STATEMENT OF THE CASE

In 2005 WILLIAM SAVELL was convicted of murder less than capital and sentenced to life imprisonment. (C.P. at 22-23) His conviction and sentence were affirmed by the Court of Appeals on May 9, 2006. *See Savell v. State*, 928 So.2d 761 (Ct.App.Miss. 2006), appellee's exhibit A, attached.

On April 18, 2011, the Supreme Court of the United States denied certiorari in *Savell v. Mississippi*, No. 10-8875.

STATEMENT OF FACTS

On September 24, 2010, Savell filed in the Circuit Court of Neshoba County, the court of conviction, a pleading styled "Petition for an 'Order' of Disinterment for Autopsy in Case No: AME 9-13-03." (C.P. at 6-21) The circuit judge, Marcus D. Gordon, treated Savell's papers as a motion for post-conviction collateral relief and denied and dismissed Savell's papers on the ground Savell had neither received nor sought permission from the Supreme Court to file his post-conviction

papers in the trial court and, accordingly, the trial court was without jurisdiction to consider Savell's claims.

On October 18, 2010, Judge Gordon entered an order denying and dismissing Savell's papers "... for failure to obtain leave from the Mississippi Supreme Court as required by Miss.Code Ann. §99-39-7." See appellee's exhibit B, attached.

In his papers requesting disinterment and another autopsy, Savell whines about the qualifications of Dr. Steven Hayne who performed the autopsy on Mandy Davis's dismembered and decomposed remains. The opinion issued by the court of appeals affirming Savell's conviction reflects the cause of Davis's death was "nine stab wounds to the chest." 928 So.2d at 966.

Savell claims in his petition that Dr. Hayne's "... findings are illegal and inadmissible in a court of law." (C.P. at 10) According to Savell and his writ writer "[t]he state has failed to prove the 'corpus delicti' of a murder offense." (C.P. at 11)

Savell could and should have presented these arguments at trial or on direct appeal, i.e., then and there and not here and not in a post-conviction petition targeting his conviction and the evidence used to convict him.

While Savell did not testify at his trial, he gave a statement to law enforcement reflecting that he

"hit Davis 'up side her head' to get her to be quiet, causing her knees to buckle, after which she fell to the ground face forward. He stated that, when he turned her over, he knew he had killed her." 928 So.2d at 967.

According to Savell's statement, he and a man identified only as "Iceman" then tried to put Davis's body into an old well, but did not succeed. Davis was thereafter buried in a shallow grave.

Her completely dismembered body was found several days later. Two severed arms, a severed head, and a severed leg were found inside a red fireman's bag, and Davis's torso with one leg attached was found in a nearby creek.

We respectfully submit the circuit judge did not abuse his judicial discretion in denying and dismissing Savell's petition on the ground it was an assault from the flank on Savell's conviction and sentence masquerading as a petition for disinterment and autopsy.

SUMMARY OF THE ARGUMENT

The trial court had jurisdiction to make its determination that it had no jurisdiction. It did not err in treating Savell's papers as a motion for post-conviction collateral relief and denying and dismissing same on the ground Savell was in the wrong court at the wrong time and the circuit court was without jurisdiction to entertain and address Savell's claims. *See* Miss.Code Ann. §99-39-7 of the Mississippi Uniform Post-Conviction Collateral Relief Act (UPCCRA).

Even if Savell was in the proper court, "[t]he burden is upon [Savell] to prove by a preponderance of the evidence that he is entitled to the requested post-conviction relief." **Bilbo v. State**, 881 So.2d 966, 968 (¶3) (Ct.App.Miss. 2004) citing Miss.Code Ann. §99-39-23(7) (Rev.2000).

When reviewing the trial court's decision to deny a petition for post-conviction relief, an appellate court will not disturb the trial court's factual findings unless they are found to be clearly erroneous. **Brown v. State**, 731 So.2d 595, 598 (¶6) (Miss. 1999).

"A trial judge's finding will not be reversed unless manifestly wrong." **Hersick v. State**, 904 So.2d 116, 125 (Miss. 2004).

"However, where questions of law are raised the applicable standard of review is *de novo*,"

i.e., afresh or anew. *Id.*

Because Savell's conviction and sentence have been appealed and affirmed he is required to obtain leave of the Mississippi Supreme Court to file a post-conviction relief motion. *See Torns v. State*, 866 So.2d 486 (Ct.App.Miss. 2003); *Cox v. State*, 856 So.2d 679 (Ct.App.Miss. 2003); Miss. Code Ann. §99-39-7.

ARGUMENT

THE TRIAL JUDGE DID NOT ABUSE HIS JUDICIAL DISCRETION AND DID NOT ERR AS A MATTER OF LAW IN DENYING POST-CONVICTION RELIEF ON THE GROUND IT HAD NO JURISDICTION TO ENTERTAIN SAVELL'S REQUEST.

Savell, citing and relying upon Miss.Code Ann. §41-61-65 and §41-61-67, seeks disinterment of the dismembered remains of the person he was convicted of killing.

Judge Gordon, we respectfully submit, was eminently correct when he stated in his order the following:

“Pursuant to Miss.Code Ann. §99-39-7 and under the above circumstances, Petitioner must first obtain leave from the Mississippi Supreme Court prior to filing a post-conviction relief petition with this Court. Therefore, this Court is without jurisdiction to entertain Petitioner's Motion and it should be denied and dismissed.” (C.P. at 27)

Savell argues the trial court abused its judicial discretion in treating his petition for disinterment and autopsy as a motion for post-conviction collateral relief and denying and dismissing same. According to Savell he “ . . . did not challenge his conviction nor life sentence in this ‘Petition,’ even though it states that the conviction and sentence can not stand and must be corrected to correct a miscarriage of Justice.” (Appellant's Brief at 4)

“A rose by any other name would smell as sweet.” WILLIAM SHAKESPEARE, *Romeo and*

Juliet (1600).

Meaning, of course, what matters is what something is, not what it is called.

Make no mistake. Savell's petition is actually an assault on the integrity of his conviction camouflaged as a petition for statutory disinterment.

Savell stated in his petition that "the State of Mississippi cannot, at this time, certify this Jane Doe death as a 'homicide', much less a 'deliberate design murder,' until such time Mississippi performs a complete and accurate autopsy, performed by a qualified 'Forensic Pathologist', certified, as required by Mississippi Statutory Laws." (C.P. at 7)

The gist of Savell's complaint is quoted from his petition as follows:

"Until a legally certified state medical examiner performs a valid autopsy in case No. AME 9-13-03, death of decedent, the manner of death cannot and is not officially certified a 'homicide.' No grand jury can find the probability that petitioner committed a murder offense, nor can the court allow petitioner's conviction for murder and life sentence to stand in the face of such an uncertified manner of death." (C.P. at 17)

* * * * *

"Petitioner stands convicted of murder and sentenced to life imprisonment for a death the State of Mississippi has yet to legally and validly certify as a 'Homicide.' " (C.P. at 17)

In other words, because the cause and manner of Davis's death was not conclusively and legitimately determined at trial Savell's conviction and sentence cannot stand. (C.P. at 9-10)

Needless to say, all of the above is tantamount to a post-conviction collateral attack on Savell's conviction of deliberate design murder which Savell suggests was never properly proven by qualified people at trial. A jury, on the other hand, decided otherwise, and that should be the end of it all.

We respectfully submit the circuit judge did not err in treating Savell's papers as a request for post-conviction collateral relief and denying and dismissing same on the ground it was without jurisdiction to address his allegations. Because Savell's conviction and sentence have already been appealed and affirmed he is required to obtain leave of the Mississippi Supreme Court to file a post-conviction relief motion. See **Torns v. State**, *supra*, 866 So.2d 486 (Ct.App.Miss. 2003); **Cox v. State**, *supra*, 856 So.2d 679 (Ct.App.Miss. 2003); Miss. Code Ann. §99-39-7.

This is a post-conviction matter targeting Savell's conviction. Analogous here is the rule that "[t]he burden is upon [Savell] to prove by a preponderance of the evidence that he is entitled to the requested post-conviction relief." **Bilbo v. State**, *supra*, 881 So.2d 966, 968 (¶3) (Ct. App.Miss. 2004) citing Miss.Code Ann. §99-39-23(7) (Rev.2000).

We respectfully submit the trial judge did not abuse his judicial discretion or err as a matter of law in finding that he was without jurisdiction to decide the issues because Savell had not first sought permission from the Supreme Court to file his papers in the trial court.

In addition to all this, Savell has not alleged "sufficient cause" as required by Miss.Code Ann. §41-61-67(1) for further investigation after Davis's dismembered body has already been buried.

Finally, by virtue of Miss.Code Ann. §41-61-65(3), "others who disagree with the medical examiner's determinations" should first file their petition of disagreement with the office of the State Medical Examiner and/or its designated and authorized representative before petitioning the circuit court.

CONCLUSION

Miss.Code Ann. §99-39-5 (1)(a) reads, in its applicable part, as follows:

(1) Any prisoner in custody under sentence of a court of record of the State of Mississippi who claims:

(a) **That the conviction or the sentence was imposed in violation of . . . the Constitution or laws of Mississippi; . . .**

(i) may file a motion to vacate, set aside or correct the judgment or sentence . . .” [emphasis ours]

Paraphrasing William Shakespeare, “a rose by any other name smells the same.”

Savell’s post-conviction papers have the distinct aroma of a motion filed under the UPCCRA.

The trial judge did not abuse his judicial discretion and did not err as a matter of law in treating Savell’s post-conviction papers as a motion for post-conviction collateral relief targeting Savell’s conviction for murder and the life sentence imposed in its wake. After all, Savell asserted, *inter alia*, in his petition that this Court cannot allow his conviction for murder and his life sentence to stand in the face of an uncertified manner of death. (C.P. at 11)

Savell also proposed that in the event “. . . it is certified that the manner of death to be a ‘homicide,’ ” the circuit court should order the district attorney to “seek a grand jury indictment.” (C.P. at 11)

Savell even mentions “self-representation” at a “retrial” in paragraph V . (C.P. at 17)

Savell’s conviction having been affirmed on direct appeal, Savell was first required to seek permission of the Supreme Court before filing his motion for post-conviction relief. He did not do so. The circuit judge had jurisdiction to treat Savell’s papers as a motion for post-conviction relief

and to deny same for the reasons stated in the court's order.

In any event, Savell has failed to alleged "sufficient cause" for disinterment and autopsy of Mandy Davis's dismembered remains. He simply attacks the manner of death and the qualifications of the medical examiner who performed the autopsy.

This could and should have been done at trial.

"This Court reviews the denial of post-conviction relief under an abuse of discretion standard." **Phillips v. State**, 856 So.2d 568, 570 (Ct.App.Miss. 2003). The same abuse of discretion standard should apply here.

The circuit judge was neither clearly erroneous nor manifestly wrong and did not abuse his judicial discretion or err as a matter of law in accepting jurisdiction in order to deny and dismiss Savell's petition on the ground the court was without jurisdiction.

Appellee respectfully submits this case is devoid of any claims worthy of a reversal of the trial court's decision denying Savell's petition.

The order denying relief summarily should be forthwith affirmed.

Respectfully submitted,

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mony of the violent death of Charity. Bell gave no confession and testified before the jury that he did not commit the murder. Admission of this constitutionally prohibited hearsay can hardly be viewed as harm- less error. Accordingly, we reverse Bell's conviction and remand to the circuit court for a new trial consistent with this opinion.

¶ 39. Because we feel reversal is consti- tutionally required and that the remaining issues, as framed, are unlikely to reoccur during retrial, we find it unnecessary and unwise to address those moot issues.

¶ 40. THE JUDGMENT OF THE FIRST JUDICIAL DISTRICT OF THE HINDS COUNTY CIRCUIT COURT OF CONVICTION OF MURDER AND SENTENCE OF LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS REVERSED AND REMANDED FOR PROCEED- INGS CONSISTENT WITH THIS OPIN- ION. ALL COSTS OF THIS APPEAL ARE ASSESSED TO HINDS COUNTY.

KING, C.J., LEE AND MYERS, P.JJ.,
SOUTHWICK, IRVING, CHANDLER,
GRIFFIS, BARNES AND ISHEE, JJ.,
CONCUR.



William Dewayne SAVELL, Appellant

v.

STATE of Mississippi, Appellee.

No. 2004-KA-01953-COA.

Court of Appeals of Mississippi.

May 9, 2006.

Background: Defendant was convicted in a jury trial in the Circuit Court, Neshoba

County, Marcus D. Gordon, J., of murder. Defendant appealed.

Holdings: The Court of Appeals, Ishee, J., held that:

- (1) defendant's statements to police were freely and voluntarily given in noncus- todial situation, and thus, *Miranda* warnings were unnecessary;
- (2) prejudicial effect of photographs of bag containing murder victim's limbs and head did not outweigh their probative value;
- (3) sufficient probable cause existed to is- sue search warrant listing shoes among items to be searched for and seized; and
- (4) defendant's confession was admissible.

Affirmed.

1. Criminal Law §338(1), 661, 1153(1)

Relevancy and admissibility of evi- dence are largely within the discretion of the trial court, and reversal may be had only where that discretion has been abused; the trial court must exercise its discretion, and appellate court will reverse only when an abuse of discretion prejudic- ing the accused occurs.

2. Criminal Law §412.2(2)

Defendant's statements to police were freely and voluntarily given in noncustodial situation, and thus, *Miranda* warnings were unnecessary; reasonable person in defendant's position would not have felt that his freedom of movement was re- strained anywhere near degree associated with a formal arrest, defendant arrived in his own vehicle, was significantly unsuper- vised while at police station, and left in his own vehicle less than one hour after he arrived.

EXHIBIT

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3. Criminal Law Ⓒ1158(4)

Where, on conflicting evidence, the lower court admits a statement into evidence, appellate court generally must affirm.

4. Criminal Law Ⓒ412.2(3)

Custodial interrogation must be preceded by advising the defendant that he has the right to remain silent and the right to the presence of an attorney.

5. Criminal Law Ⓒ412.2(3)

Any noncustodial statement given freely and voluntarily without coercion requires no *Miranda* warning for admissibility.

6. Criminal Law Ⓒ419(3)

Officer's testimony that information had been received that defendant had hunted on property where murder victim's body was discovered and that property owner and defendant knew each other and had hunted on property was not hearsay; officer gave testimony in response to prosecutor questioning him as to why he searched property, and purpose of offer of out-of-court statement was to show effect on the officer, i.e., why officer acted as he did and was at particular place at particular time. Rules of Evid., Rule 802.

7. Criminal Law Ⓒ419(2)

When a statement is not offered into evidence to prove the truth of its subject matter, it does not fit the definition of hearsay, and may not be excluded from evidence. Rules of Evid., Rule 802.

8. Criminal Law Ⓒ419(2)

A statement is not hearsay if offered merely to show its effect on someone. Rules of Evid., Rule 802.

9. Criminal Law Ⓒ438(7)

Prejudicial effect of photographs of bag containing murder victim's limbs and head did not outweigh their probative val-

ue; although photographs were gruesome, so too was manner in which victim's body was hidden, photographs served both to show location of remains and to supplement witness testimony concerning location of remains, as well as state in which they were discovered, and photographs were not so repetitive as to lose their probative value, as angles and details emphasized by each photograph were distinct. Rules of Evid., Rule 403.

10. Criminal Law Ⓒ438(1, 7), 1153(1)

The admission of photographs is a matter left to the sound discretion of the trial judge and that his decision favoring admissibility will not be disturbed absent a clear abuse of that judicial discretion; the discretion of the trial judge in this matter is almost unlimited, regardless of the gruesomeness, repetitiveness, and the extenuation of probative value.

11. Criminal Law Ⓒ438(7)

So long as a photograph has probative value and serves a meaningful evidentiary purpose, it may still be admissible despite being gruesome, grisly or inflammatory.

12. Criminal Law Ⓒ438(6)

Photographs are considered to have evidentiary value in the following instances: (1) aid in describing the circumstances of the killing; (2) describe the location of the body and the cause of death; (3) supplement or clarify witness testimony.

13. Searches and Seizures Ⓒ114

Sufficient probable cause existed to issue search warrant listing shoes among items to be searched for and seized; after finding remains of victim, facts supporting belief that shoes could be found on defendant's property included, inter alia, victim had last been seen at defendant's property, defendant had given inconsistent statements to police, there was intentional fire

set in defendant's truck, victim's remains were found in bag known to have been carried in vehicle defendant drove, defendant told close friend where body might be located, and defendant had access to area where human remains were found. U.S.C.A. Const.Amend. 4.

14. Searches and Seizures ⇐113.1, 117

The totality of the circumstances standard for the determination of the existence of probable cause for the issuance of a warrant requires a magistrate to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. U.S.C.A. Const.Amend. 4.

15. Criminal Law ⇐1158(2)

Reviewing a magistrate's issuance of a search warrant on appeal does not require that appellate court make a de novo determination of probable cause; therefore, the standard of review is to determine whether there was a substantial basis for the magistrate finding probable cause. U.S.C.A. Const.Amend. 4.

16. Criminal Law ⇐519(1), 531(3)

Defendant's confession was admissible in murder prosecution; record showed evidence that defendant initiated contact, signed waiver, and gave confession, there was no evidence in record of promises, threats, or coercion leading to confession, trial judge was satisfied that confession was knowing, intelligent, and voluntary, and defendant's argument that confession in no way comported with autopsy report of death by nine stab wounds to chest did not bar admissibility of confession.

17. Criminal Law ⇐641.3(4)

An accused's Sixth Amendment right to counsel accrues once the accused is in custody; specifically, the right attaches at the point in time when the initial appearance ought to have been held. U.S.C.A. Const.Amend. 6.

18. Criminal Law ⇐412.2(4)

Once the accused asserts the right to an attorney, the right attaches and any statements obtained from the accused during subsequent police-initiated custodial questioning regarding the charge at issue (even if the accused purports to waive his rights) are inadmissible.

19. Criminal Law ⇐412.2(4)

An accused, having expressed his desire to deal with police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police.

20. Criminal Law ⇐1158(4)

In reviewing a trial court's denial of a motion to suppress a confession, since the trial court sits as the fact-finder when determining the issue of whether an accused's confession has been intelligently, knowingly and voluntarily given, appellate court will only reverse the trial court's determination of this issue when such determination is manifestly wrong.

21. Criminal Law ⇐1134(3), 1158(4)

In order to reverse a trial court's determination on admissibility into evidence of a confession, the trial court must have committed manifest error, applied an incorrect legal standard, or rendered a decision contrary to the overwhelming weight of the evidence.

22. Criminal Law ¶531(1, 3)

A confession is only admissible after the State has proven beyond a reasonable doubt that the accused's confession was not the product of promises, threats or inducements.

Edmund J. Phillips, attorney for appellant.

Office of the Attorney General by John R. Henry, attorney for appellee.

Before KING, C.J., CHANDLER and ISHEE, JJ.

ISHEE, J., for the Court.

¶1. William Dewayne Savell was convicted of the murder of Mandy Davis in the Circuit Court of Neshoba County and sentenced to life imprisonment in the Mississippi Department of Corrections ("MDOC"). Aggrieved by his sentence and conviction, Savell now appeals. Finding no error, we affirm.

FACTS

¶2. Davis was last seen on Wednesday, September 10, 2003, visiting Savell's trailer after having dropped her car off at Savell's automobile repair shop (located next to his trailer) to be fixed. Davis had been acquainted with Savell for a number of years, and she visited him regularly. Patsy Pope, Savell's mistress through whom he fathered a child, testified that she saw Davis at Savell's trailer at approximately 6:30 p.m. on September 10, 2003. Davis's mother testified that Davis did not come home on the night of September 10, 2003. On Thursday, September 11, 2003, Davis did not show up at work at the school

where she taught as a substitute. On the evening of Thursday, September 11, 2003, Savell called Davis's home and said that her automobile was ready to be picked up. When Davis's mother arrived at Savell's automobile repair shop, Savell told her that Davis had been there on Wednesday and left with someone else, who he did not see. On Saturday, September 13, 2003, Davis's mother phoned the Philadelphia Police Department and reported Davis missing.

¶3. Also on September 13, 2003, after officers learned that Davis had last been seen with Savell, Captain Dickie Sistrunk of the Philadelphia Police Department called Savell and asked him to come to the police station to answer some questions concerning Davis. Savell testified at the suppression hearing that when Sistrunk called him, he was told to "come to the police department or either they would pick [him] up." Savell arrived in his own vehicle. Savell was not under arrest nor even a suspect at this time, and officers did not yet know for sure that a crime had been committed. When Savell first arrived, he went to the office of a police investigator, Jimmy Reid, to answer questions concerning Davis. Savell asked to use the restroom, at which point Reid showed him the restroom and left Savell alone. Savell testified at the suppression hearing that when he returned from the restroom, he walked back into Reid's office and was there for two or three minutes before Reid returned.

¶4. Savell told Reid that Davis had been at his trailer on September 10, 2003 getting her automobile fixed, that she had narcotics¹ in her possession, and that she had left with someone else who he did not see. He additionally told Reid that he was awakened that night by a "popping sound,"

1. Savell told Reid that Davis had a bag of "ice" (a form of methamphetamine) that she

was looking to sell, and that he estimated its value at approximately \$400.

and that he went outside and saw that his truck was on fire.² At the time of the interview with Reid, Savell was wearing a splint on his hand. He stated that he had injured it breaking his truck window to get wrecker keys from inside. Reid then thanked Savell for coming in, and Savell left in his own vehicle. Savell was at the police station for approximately thirty-five to forty-five minutes.

¶5. Police visited Savell's property on Sunday, September 14, 2003, and looked around with Savell's consent, but found nothing helpful in locating Davis. On Monday, September 15, 2003, police began looking around on the property of Ted and Patty Pope, where Savell was known to regularly hunt. On the first trip to the Pope property, police found nothing of interest.

¶6. On Tuesday, September 16, 2003, police interviewed Savell again. At this time, though Savell was not under arrest, he was advised of his rights pursuant to *Miranda v. Arizona*, after which Savell signed, dated, timed and acknowledged a waiver of those rights. At this interview, Savell again mentioned the narcotics Davis allegedly brought to his trailer on September 10, 2003. Savell mentioned, in connection with the burning of his truck, a person named "Iceman" that he "used to run dope for." An officer testifying at trial stated that Savell "was very inconsistent" in this interview and "would say one thing, but ... a sentence or two later ... contradict what he said." Savell said in this interview that he suspected that "Iceman" picked Davis up from his trailer on Sep-

tember 10, 2003, though he did not see him. After the interview, Savell drove himself home.

¶7. Later in the afternoon on September 16, 2003, police received a call from Patty Pope saying Savell had called her that day saying he had been attacked. Police arriving at the scene noted that Savell was bleeding from both his eye and from his rib cage area. He told police that Iceman had hit him in the eye with a two-by-four and kicked him while he was on the ground. At a police interview the next day, September 17, 2003, Savell, after again waiving his *Miranda* rights, stated that he was wearing his glasses when Iceman hit him, but when police questioned as to how he got hit in the eye with a two-by-four without breaking his glasses, Savell got angry. Savell stated that he owed Iceman money from when he ran dope for him five years previously, but Savell could not explain why Iceman waited until five years later to attack him. Police also asked him during this interview, "if you were in our shoes, where would you look [for Davis?]," and Savell gave them three locations: "off highway 16 up past the casino," "old Longino Road," and on the Pope property.

¶8. Also on September 17, 2003, Patty Pope went to Savell's property to bring him food, and noticed Savell in a truck on top of a hill. She drove up and noticed "a bunch of blood on the ground." She stated that Savell told her he had taken some pills and cut his wrist. He also had a gun to his forehead. Patty stated that, when

2. An investigator was sent to Savell's property to investigate reports of a fire in the early morning hours of September 11, 2003. Savell told the investigator that he came outside and saw his truck on fire, burst the window to get some wrecker keys, and used a wrecker to push the burning truck away from his trailer. The investigator saw no skid marks, however.

Additionally, the investigator determined that the fire had been man-made, as traces of accelerants were present. The investigator further determined that the passenger door was open during the blaze, thus discounting Savell's claims that he had to break a window.

she examined the cut, she noticed that it "was not really cut for the amount of blood that—that I noticed was everywhere." Patty stated that eventually Savell calmed down and went back to the trailer.

¶ 9. On September 18, 2003, police again went to search the Pope property, this time with the aid of a helicopter. An officer spotted something red in a pond on the property, and when investigators retrieved it, they found that it was a red fireman's bag with black handles, partially unzipped. Through the partially unzipped opening, officers saw what appeared to be human remains. Upon opening the bag, police found two severed arms, a severed head, and a severed leg, along with blue plastic material, a glove and several bricks. The crime lab experts later determined the limbs and head to belong to Davis. Davis's torso, with one leg attached, was found on September 19, 2003, in a nearby creek, partially burned, with nine stab wounds to the left chest area. A glove matching the one found in the red fireman's bag was found in the area near the torso. Crime lab experts determined Davis's cause of death to be the nine stab wounds to the chest.

¶ 10. After the bag was found, charges were filed against Savell. When police went to arrest him, Savell would not come out of his trailer. Members of the SWAT team arrived, forced entry to the trailer, and arrested Savell. It was later discovered that the red bag belonged to Ted Pope and was kept in his GMC truck. Savell had borrowed Ted Pope's truck on Sunday, September 14, 2003, after his truck burned. Savell's truck was not returned until a week after the body was found, and the bag was not in the truck when it was returned. Further searches of the Pope property led officers to a brick pile, where shoe prints were observed. The shoe prints matched a pair of shoes later confis-

cated from Savell's residence. The blue vinyl material in the bag was from a children's swimming pool cover Ted Pope had behind his house. A kaiser blade with hairs from Davis on it was found in the back of the black GMC truck.

¶ 11. Ruth Ann Smith, a neighbor of the Popes who knew Savell well, testified at trial that she saw Savell on September 17, 2003 on the Popes' property. She was standing in her kitchen window, washing dishes, when she saw Savell driving a four-wheeler out of the woods. He parked the four-wheeler at a shed, ran to the carport of the Popes' home, and ran back to the four-wheeler carrying a red bag with black handles. He also had "something blue" that he attached to the four-wheeler. Savell left for some time, and then reappeared riding the four-wheeler, at which point he retrieved "something long and shiny" from the Popes' shed. He then went back into the woods. He reappeared a long period of time later, threw something into the Popes' shed, and then drove the four-wheeler to the Popes' home. Smith then saw Savell drive away at a high speed in Ted Pope's GMC truck.

¶ 12. On September 25, 2003, while Savell was in jail, he allegedly passed word to investigators that he wanted to talk. Savell contended at trial, however, that he never said he wanted to talk to anyone. At any rate, an investigator subsequently went to get him and took him outside to smoke a cigarette. Savell told the investigator that he would tell him everything he needed to know, and the investigator took Savell back into the jail, where he advised him of his *Miranda* rights. Savell waived them. Savell then admitted to killing Davis, but he claimed it was an accident. He claimed that he, Davis and Iceman were at a shack in the woods where Davis allegedly hid narcotics. He said that she retrieved the narcotics, but then got into

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an argument with Iceman about them. Savell claimed that he then hit Davis "up side her head" to get her to be quiet, causing her knees to buckle, after which she fell to the ground face forward. He stated that, when he turned her over, he knew he had killed her. Savell claimed that he and Iceman then tried to put the body in an old well, but were unsuccessful, so buried her in a shallow grave. The following day, he put the body in a "Dive Team" bag to keep it together. Iceman's brother, Bradley, supposedly was to dispose of the body. Police then went to the site mentioned by Savell and found the bag and shallow grave. Savell subsequently signed a more in-depth confession.

¶ 13. In the in-depth confession, Savell claimed that, on September 15, 2003, he took Bradley out to the Pope property and showed him "a way to go behind Patty's to get Mandy's body so no one would see him." Savell stated that he then gave Bradley a red fire department bag he took out of Ted Pope's truck.

¶ 14. At the conclusion of the State's evidence, Savell offered no evidence. Savell was convicted of murder in the Circuit Court of Neshoba County, and sentenced to life imprisonment in the custody of the MDOC. Aggrieved by his conviction and sentence, Savell appeals, asserting the following: (1) that the trial court erred by failing to suppress his first statement to police; (2) that the trial court erred by overruling his hearsay objection; (3) that the trial court erred by admitting into evidence two photographs of the fireman's bag containing the body parts, exhibits 37 and 38; (4) that the trial court erred by overruling his objection to admissibility into evidence of a pair of tennis shoes seized from his home; (5) that the trial court erred in sustaining the objection of the prosecutor to Savell's cross-examination of Patty Pope; and (6) that the trial

court erred by admitting into evidence Savell's confession.

STANDARD OF REVIEW

[1] ¶ 15. "Relevancy and admissibility of evidence are largely within the discretion of the trial court, and reversal may be had only where that discretion has been abused." *Price v. State*, 898 So.2d 641, 653(¶ 29) (Miss.2005) (quoting *White v. State*, 742 So.2d 1126, 1134(¶ 29) (Miss. 1999)). The trial court must exercise its discretion within the scope Mississippi Rules of Evidence, and we will reverse only when an abuse of discretion prejudicing the accused occurs. *Id.*

ISSUES AND ANALYSIS

I. Whether the trial court erred by failing to suppress Savell's first statement.

[2, 3] ¶ 16. Savell contends that the trial court erred by failing to suppress his first statement to police because police failed to advise him of his *Miranda* rights before he made the statement. A defendant seeking to overturn a trial court's unfavorable ruling on a motion to suppress "bears a heavy burden." *Sanders v. State*, 835 So.2d 45, 50(¶ 15) (2003) (citing *Hunt v. State*, 687 So.2d 1154, 1160 (Miss.1996)). "Where, on conflicting evidence, the lower court admits a statement into evidence, this Court generally must affirm." *Sanders*, 835 So.2d at 50(¶ 15) (quoting *Dancer v. State*, 721 So.2d 583, 587(¶ 18) (Miss. 1998)).

[4, 5] ¶ 17. In *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), the United States Supreme Court held that "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards

effective to secure the privilege against self-incrimination." *Miranda*, 384 U.S. at 444, 86 S.Ct. 1602; see also *Manix v. State*, 895 So.2d 167, 180(¶ 38) (Miss.2005) (citing *Tolbert v. State*, 511 So.2d 1368, 1374 (Miss.1987) (outlining application of *Miranda* in Mississippi)). Such custodial interrogation must "be preceded by advising the defendant that he has the right to remain silent and the right to the presence of an attorney." *Miranda*, 384 U.S. at 479, 86 S.Ct. 1602; *Balfour v. State*, 598 So.2d 731, 742 (Miss.1992). "Custodial interrogation" has been defined as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda*, 384 U.S. at 458, 86 S.Ct. 1602. The custody test for *Miranda* purposes has been described as follows:

"Two discrete inquiries are essential to the determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave. Once the scene is set and the players' lines and actions are reconstructed, the court must apply an objective test to resolve the ultimate inquiry: was there a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest."

Yarborough v. Alvarado, 541 U.S. 652, 663, 124 S.Ct. 2140, 158 L.Ed.2d 938 (2004) (quoting *Thompson v. Keohane*, 516 U.S. 99, 112, 116 S.Ct. 457, 133 L.Ed.2d 383 (1995)). "Any noncustodial statement given freely and voluntarily without coercion requires no *Miranda* warning for admissibility." *Tolbert*, 511 So.2d at 1375 (citations omitted).

¶ 18. Savell testified at the suppression hearing that he came to the police depart-

ment on September 13, 2003, at the behest of Sistrunk because Sistrunk told him that if he did not come, officers would come to "pick him up." This testimony was never corroborated by either Sistrunk or Reid. Further, even if such language was used by Sistrunk, it was ambiguous, as officers knew Savell's truck had burned in the early morning hours of September 11, 2003. Savell drove himself to the police station. He further testified that he knew officers just wanted to question him concerning Davis's whereabouts. Officers at the time did not yet know that a crime had been committed. Once at the police station, Savell went back to Reid's office, then asked if he could use the restroom. Reid pointed out the restroom to Savell, and then went elsewhere in the station, leaving Savell unattended. Further, when Savell returned to Reid's office from the restroom, Reid did not return to the office for two to three minutes, again leaving Savell unattended. The interview lasted approximately thirty-five to forty-five minutes, after which Savell left in his own vehicle. Beyond Savell's uncorroborated testimony concerning his initial conversation with Sistrunk, there was no evidence of any threats, promises or coercion either before or during the entire course of the interview.

¶ 19. Given the totality of the above circumstances, we hold that a reasonable person in Savell's position would not have felt that his freedom of movement was restrained anywhere near the degree associated with a formal arrest. Quite to the contrary, he arrived in his own vehicle, was significantly unsupervised while at the station, and left in his own vehicle less than an hour after he arrived. Savell was not in custody within the meaning of *Miranda*, and the statement was freely and voluntarily given. Therefore, *Miranda* warnings were entirely unnecessary in this situation. Savell has thus failed to meet

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the heavy burden necessary for him to overcome in order for us to reverse the trial court's overruling of his motion to suppress.

II. Whether the trial court erred in overruling Savell's hearsay objection.

[6] ¶120. Savell next objects to the trial judge's overruling his objection to hearsay in the following exchange, which took place during the direct examination of Reid by the prosecution:

Q. Okay. Now I believe you also looked on the property of Ted and Patty Pope to see if you could turn up anything?

A. At which point?

Q. This would have been—uh—early on—uh—probably on the weekend or shortly thereafter.

A. I—on Monday, I rode a four-wheeler—uh—from the back of Burnside Park—uh—back up to the railroad tracks. Uh—they come out on—I think it's 571 maybe for the Burnside Road—uh—I never did—we—we were on which I think would be the east side of the railroad tracks and went out to the road and come back, but I—and that borders the Pope property. Uh—we were in the area, yes, sir.

Q. Did you find anything then that—that helped you?

A. No, sir, not at that time.

Q. Why—why were you looking out there?

A. We were just trying to determine any—any place that she might could be. Uh—information had been received that [Savell] had hunted on the Pope property—uh—and that Patty Pope and him knew each other and it—they had hunted on that property.

BY [COUNSEL FOR SAVELL]: Your Honor, this—this would have to be hearsay testimony that is offered at this point, your Honor. He's not laid any predicate for how he knows the knowledge and I object to this testimony.

BY THE COURT: Overruled.

[7, 8] ¶121. Rule 801(c) of the Mississippi Rules of Evidence defines hearsay: " 'Hearsay' is a statement, other than one made by the declarant while testifying at trial or hearing, offered in evidence to prove the truth of the matter asserted." *See Swindle v. State*, 502 So.2d 652, 658 (Miss.1987) ("To constitute hearsay, extrajudicial words must by some means present a statement, declaration, or assertion introduced for the purpose of proving the truth of the matter contained in or asserted by the item or thing"). Mississippi Rule of Evidence 802 holds that hearsay is inadmissible, except as provided by law. Logically, when a statement is *not* offered into evidence to prove the truth of its subject matter, it does *not* fit the definition of hearsay, and may not be excluded from evidence under Rule 802. *See Thorson v. State*, 895 So.2d 85, 126(¶95) (Miss.2004) (citing *Knight v. State*, 601 So.2d 403, 406 (Miss.1992)). For example, a statement is not hearsay if "offered merely to show its effect on someone." *Id.* In *Butler v. State*, 758 So.2d 1063, 1065(¶9) (Miss.2000), the defendant objected to the following statement by an officer as hearsay:

Q. And did you [Officer Jackson] determine as to what happened there that night?

A. Yes, Sir. Mr. Boyte had explained that as he came out to his truck, someone had jumped him, grabbed the money bag, and they got in a tussle. And he went down to the ground, was still hanging on to the money bag. And at some point he

was hit. He said he looked around to try to get his head in a different location and he was struck again. At that point he turned the money bag loose and two subjects ran away.

The supreme court in *Butler* explained: "[T]he out of court statement . . . was not admitted for the purpose of proving the truth of the assertion made, but to explain the steps taken by Officer Jackson to investigate the incident. The truth of the statement . . . was not in issue." *Id.*; see *id.* at (¶ 10) (discussing holding in *Swindle* that officer's testimony about informant tip was admissible to show why officer "acted as he did and was at a particular place at a particular time").

¶ 22. In the case sub judice, Reid testified that "information had been received that [Savell] had hunted on the Pope property—uh—and that Patty Pope and him knew each other and it—they had hunted on that property." He gave this testimony in response to the prosecutor questioning him as to why he searched the Pope property. Clearly, the purpose of the offer of the out-of-court statement in this instance was to show the effect on the officer, i.e., why Reid "acted as he did and was at a particular place at a particular time." The matter was not asserted for its truth, and therefore not hearsay. This assignment of error is clearly without merit.

III. Whether the trial court erred by admitting into evidence exhibits 37 and 38.

[9] ¶ 23. Savell next contends that the admission into evidence of exhibits 37 and 38, photographs of the red fireman's bag containing Davis's limbs and head, was erroneous. He asserts that the prejudicial effect of these photographs on the jury far outweighed their probative value, and that the trial judge should have consequently excluded them. In support of his argu-

ment, Savell cites Rule 403 of the Mississippi Rules of Evidence, which states, "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence."

[10, 11] ¶ 24. "It is well settled in this state that the admission of photographs is a matter left to the sound discretion of the trial judge and that his decision favoring admissibility will not be disturbed absent a clear abuse of that judicial discretion." *Noe v. State*, 616 So.2d 298, 303 (Miss. 1993) (citing *Gardner v. State*, 573 So.2d 716, 718-19 (Miss.1990); *Sudduth v. State*, 562 So.2d 67, 69-70 (Miss.1990)). The discretion of the trial judge in this matter is almost unlimited, "regardless of the gruesomeness, repetitiveness, and the extenuation of probative value." *Id.* (quoting *Williams v. State*, 544 So.2d 782, 785 (Miss.1987)). So long as a photograph has probative value and serves a meaningful evidentiary purpose, it may still be admissible despite being gruesome, grisly or inflammatory. *Id.* (citations omitted). The trial judge's discretion, however, while "almost unlimited," is not completely unfettered. *Id.* However, it has been noted by the Mississippi Supreme Court that "photographs have been held 'to be so gruesome and inflammatory as to be prejudicial in only one circumstance, close-up photograph of a partly decomposed, maggot-infested skull.'" *Taylor v. State*, 672 So.2d 1246, 1270-71 (Miss.1996) (noting solitary instance of photographs being held prejudicial in *McNeal v. State*, 551 So.2d 151 (Miss.1989)).

[12] ¶ 25. "Photographs are considered to have evidentiary value in the following instances: '(1) aid in describing the

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circumstances of the killing; (2) describe the location of the body and the cause of death; (3) supplement or [clarify] witness testimony.'" *McIntosh v. State*, 917 So.2d 78, 83-84(¶ 13) (Miss.2005) (quoting *Spann v. State*, 771 So.2d 883, 895(¶ 31) (Miss. 2000)).

¶ 26. In the case sub judice, the complained of photographs are quite gruesome. However, so too was the manner in which Davis's body was hidden. The photographs serve both to show the location of the remains and to supplement witness testimony concerning the location of the remains, as well as the state in which they were discovered. Furthermore, we do not find the photographs so repetitive as to lose their probative value, as the angles and details emphasized by each photograph are distinct. Thus, the photographs were of obvious probative value, and the trial judge correctly so held. The trial judge clearly considered the potential danger of prejudice, but found it outweighed by the probative value of the photographs. He thoroughly discussed the photographs with counsel for both sides concerning why the photographs were being offered into evidence prior to making his ruling. Accordingly, we cannot say that the trial judge abused his broad discretion concerning the admission of the photographs, exhibits 37 and 38. This assignment of error is without merit.

IV. Whether the trial court erred in overruling Savell's objection to admissibility into evidence of the pair of tennis shoes and denying Savell's motion to suppress them.

[13] ¶ 27. Savell argues that the trial court erred by admitting into evidence a

pair of tennis shoes seized from his home which matched shoe prints found at a location related to the crime. He asserts that, though the search warrant pursuant to which police searched his home authorized the seizure of shoes, nothing in the affidavit or underlying facts and circumstances supporting the warrant supported seizure of shoes. Savell thus contends that his Fourth Amendment rights against unreasonable search and seizure were violated due to this lack of probable cause.³

[14, 15] ¶ 28. The United States Supreme Court has established a "totality of the circumstances" standard for the determination of the existence of probable cause for the issuance of a warrant. *Illinois v. Gates*, 462 U.S. 213, 233, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983); see *Lee v. State*, 435 So.2d 674, 676 (Miss.1983) (adopting "totality of the circumstances" standard in Mississippi). This simply requires a magistrate to "make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Gates*, 462 U.S. at 238, 103 S.Ct. 2317. "[R]eviewing a magistrate's issuance of a search warrant on appeal does not require that we make a *de novo* determination of probable cause; therefore, our standard of review is to determine whether there was a substantial basis for the magistrate finding probable cause." *Pittman v. State*, 904 So.2d 1185, 1189(¶ 4) (Miss.Ct.App.2004) (citing *Smith v. State*, 504 So.2d 1194, 1196 (Miss.1987)).

3. The Fourth Amendment to the United States Constitution states, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no

warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. CONST. amend. IV.

¶29. Sistrunk and Officer Danny Knight, after finding the remains of Davis in the red fireman's bag on the Pope property, presented the judge issuing the warrant with an affidavit stating that they had good reason to believe that things such as a "Kaiser blade, ax, hatchet(s) [sic], chain saws . . . boots, shoes, clothes, gloves and other instrumentalities used in the [c]ommission of a crime" could be found in or on Savell's home and property. The underlying facts supporting the belief that such things could be found on Savell's property included, inter alia, the following: Davis had last been seen at Savell's property; Savell had given inconsistent statements to police; there was an intentional fire set in Savell's truck on September 11, 2003; Davis's remains had been found in a red fireman's bag previously known to have been carried in the vehicle Savell was driving at the time; police received information from "a close personal friend" that Savell told her where the body might be located; and, Savell "would and does have access to the area where the human remains were found." We find these facts to be more than ample to support seizure from Savell's residence of the pair of tennis shoes. When police search a premises pursuant to a warrant in a murder investigation, clothing and shoes of a suspect are items typically searched for because of the importance of DNA, tissue and fiber analysis, as well as other evidentiary purposes. Therefore, it is clear that the magistrate in the case sub judice had a substantial basis for finding probable cause to issue a search warrant listing shoes among the items to be searched for and seized. This assignment of error is thus without merit.

V. Whether the trial court erred in sustaining the objection of the prosecutor to Savell's cross-examination of Patty Pope.

¶30. Savell contends that the trial judge erred in sustaining the prosecution's

objection in the following exchange during Savell's cross-examination of Pope:

Q. Monday, September twenty-second, you were the—you were—uh—interviewed by Dickie Sistrunk and Officer Knight, weren't you?

A. If that was the paperwork date.

Q. Then the next day on the twenty-third, they took you to Jackson for an interview didn't they?

BY [PROSECUTION]: Your Honor, I've got an objection.

BY THE COURT: Sustained.

BY [COUNSEL FOR SAVELL]: Your Honor, is the Court ruling that she can't answer if she was the subject of an interview in Jackson?

BY THE COURT: I think I know what you're going into—

BY [COUNSEL FOR SAVELL]: Your Honor, I'm not going any further than that.

BY THE COURT: I sustain the objection.

[COUNSEL FOR SAVELL] CONTINUES:

Q. Were you interviewed the next day on Tuesday? You said you interviewed on Monday, were you interviewed again on Tuesday?

A. Yes, sir, if there's paperwork on that date I was.

Q. That didn't occur in Philadelphia, did it?

BY [PROSECUTION]: Objection, your Honor?

BY THE COURT: Sustained.

Savell presents no argument as to this issue aside from citing a passage from a case explaining the importance of cross-examination as an evidentiary tool. See *Patrick v. State*, 285 So.2d 165, 167 (Miss. 1973) (quoting *Prewitt v. State*, 156 Miss.

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731, 735, 126 So. 824, 825 (1930)). He fails utterly to direct our attention to how the trial judge's ruling constituted an abuse of discretion or resulted in prejudice to him. We see nothing in the record to indicate that the trial judge abused his discretion in sustaining the prosecution's objections in the above exchange, and we see no prejudice to Savell even if the trial judge's discretion were abused. Accordingly, this assignment of error is without merit.

VI. Whether the trial court erred in admitting into evidence Savell's confession.

[16] ¶31. Savell contends that his confession on September 25, 2003, was taken at a time after he had requested appointment of counsel. He contends that he requested counsel both at his initial appearance and on other occasions. Savell further argues that, though the investigator who took his confession testified at the suppression hearing that jailers had informed him that Savell wanted to see him, the investigator's notes and reports did not reflect this. Savell thus argues that his right to counsel was violated by officer-initiated interrogation and that the confession should have been suppressed as a result.

[17-19] ¶32. An accused's Sixth Amendment right to counsel accrues once the accused is in custody. *Brink v. State*, 888 So.2d 437, 447(¶28) (Miss.Ct.App.2004) (citing *Balfour v. State*, 598 So.2d 731, 743 (Miss.1992)). "Specifically, the right attaches at the point in time when the initial appearance ought to have been held." *Brink*, 888 So.2d at 447(¶28) (citing *McGilberry v. State*, 741 So.2d 894, 904(¶17) (Miss.1999)). Once the accused asserts the right to an attorney, the right attaches and "any statements obtained from the accused during subsequent police-initiated custodial questioning regarding the charge at issue (even if the accused

purports to waive his rights) are inadmissible." *Balfour*, 598 So.2d at 742 (quoting *McNeil v. Wisconsin*, 501 U.S. 171, 179, 111 S.Ct. 2204, 115 L.Ed.2d 158 (1991)). "[A]n accused, having expressed his desire to deal with police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, *unless the accused himself initiates* further communication, exchanges, or conversations with the police." *Edwards v. Arizona*, 451 U.S. 477, 484-85, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981) (emphasis added). "Although a defendant may sometimes later regret his decision to speak with police, the Sixth Amendment does not disable a criminal defendant from exercising his free will." *Michigan v. Harvey*, 494 U.S. 344, 353, 110 S.Ct. 1176, 108 L.Ed.2d 293 (1990)

[20-22] ¶33. In reviewing a trial court's denial of a motion to suppress a confession, "we apply the familiar general rule that since the trial court sits as the fact-finder when determining the issue of whether an accused's confession has been intelligently, knowingly and voluntarily given, we will only reverse the trial court's determination of this issue when such determination is manifestly wrong." *Glasper v. State*, 914 So.2d 708, 716(¶21) (Miss. 2005). In order for us to reverse a trial court's determination on admissibility into evidence of a confession, the trial court must have committed manifest error, applied an incorrect legal standard, or rendered a decision contrary to the overwhelming weight of the evidence. *Id.* at 716-17 (citations omitted). Further, "there is no doubt that a confession is only admissible after the State has proven beyond a reasonable doubt that the accused's confession was not the product of promises, threats or inducements." *Id.* at 717 (citations omitted).

¶34. In the case sub judice, the trial judge found that the confession was admissible after hearing testimony both from the officer taking the confession and from Savell. The trial judge heard conflicting accounts from the officer and Savell as to whether Savell initiated the confession, and found the officer's testimony to be more credible. The record shows evidence that Savell initiated the contact, signed a waiver, and gave a confession. There is no evidence in the record of promises, threats or coercion leading to the confession. The trial judge was thus satisfied that the confession was knowing, intelligent and voluntary. Further, Savell's argument that the confession "in no way comported with the autopsy report of death by nine stab wounds to the chest" does not bar the admissibility of the confession. Therefore, we find nothing indicating to us that the trial judge manifestly erred, applied an incorrect legal standard, or made a decision contrary to overwhelming weight of the evidence. This assignment of error is without merit.

¶35. **THE JUDGMENT OF THE CIRCUIT COURT OF NESHOBA COUNTY OF CONVICTION OF MURDER AND SENTENCE OF LIFE IMPRISONMENT IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTION IS AFFIRMED. ALL COST OF THIS APPEAL ARE ASSESSED TO NESHOBA COUNTY.**

KING, C.J., LEE AND MYERS, P.JJ.,
SOUTHWICK, IRVING, CHANDLER,
GRIFFIS, BARNES AND ROBERTS,
JJ., CONCUR.



Ronnie D. POWELL, Appellant

v.

STATE of Mississippi, Appellee.

No. 2004-KA-01790-COA.

Court of Appeals of Mississippi.

May 9, 2006.

Background: Defendant was convicted in a jury trial in the Circuit Court, Warren County, Frank G. Vollar, J., of armed robbery. Defendant appealed.

Holdings: The Court of Appeals, Lee, P.J., held that:

- (1) communications between juror and senator and cell phone conversations of other jurors during deliberations did not warrant mistrial;
- (2) victim's identification of defendant was not so impermissibly suggestive as to give rise to very substantial likelihood of irreparable misidentification;
- (3) evidence was sufficient to establish voluntariness of defendant's confession so as to support its admission; and
- (4) evidence was sufficient to support conviction.

Affirmed.

1. Criminal Law ⇨1155

The grant or denial of a motion for mistrial is within the discretion of the trial court.

2. Criminal Law ⇨855(8)

Communications between juror and senator and cell phone conversations of other jurors during deliberations did not warrant mistrial; juror stated that he did not speak about merits of case with senator nor did he inform senator of breakdown of votes, and there was no testimony presented as to which jurors were on their cell phones, what they were discussing,

IN THE CIRCUIT COURT OF NESHOBIA COUNTY, MISSISSIPPI

WILLIAM DEWAYNE SAVELL

PETITIONER

Vs.

Cause No: 10-CV-0334-NS-G

STATE OF MISSISSIPPI

RESPONDENT

ORDER DENYING AND DISMISSING MOTION FOR POST-CONVICTION RELIEF

ON THIS DAY came Petitioner, William Dewayne Savell, who makes his motion for an "Order of Disinterment for Autopsy." Such a motion constitutes an action for relief under the Mississippi Uniform Post-Conviction Collateral Relief Act, *Miss. Code Ann. § 99-39-1 et seq.* The Petitioner was tried and convicted in Circuit Court and that conviction was then affirmed by the Mississippi Court of Appeals in Case Number 2004-KA-01953-COA. Pursuant to *Miss. Code Ann. § 99-39-7* and under the above circumstances, Petitioner must first obtain leave from the Mississippi Supreme Court prior to filing a post-conviction relief petition with this Court. Therefore, this Court is without jurisdiction to entertain Petitioner's Motion and it should be denied and dismissed.

IT IS THEREFORE ORDERED AND ADJUDGED, that the Petitioner, William Dewayne Savell, is hereby **DENIED** post-conviction relief and his Petition **DISMISSED** for failure to obtain leave from the Mississippi Supreme Court as required by *Miss. Code Ann. § 99-39-7*.

IT IS FURTHER ORDER AND ADJUDGED, that the Circuit Clerk immediately forward certified copies of this Order to the Supreme Court of Mississippi and the Petitioner at his last known address of incarceration.



MB-15
Pg 340

FILED

OCT 18 2010

TIME

ORDERED AND ADJUDGED, this the 15 day of October, 2010.


CIRCUIT JUDGE MARCUS D. GORDON

FILED

OCT 18 2010

TIME

PATTI DUNCAN LEE
CIRCUIT CLERK

MB-75
361 28

CERTIFICATE OF SERVICE

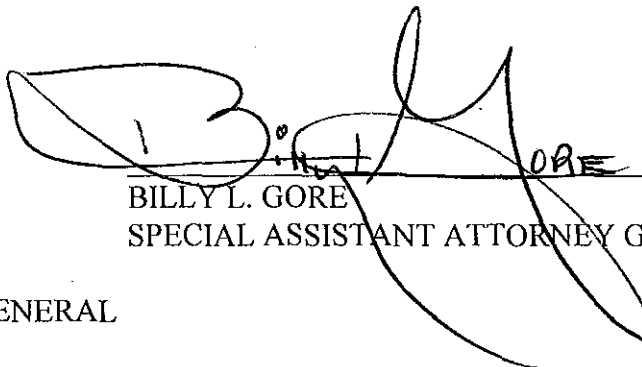
I, Billy L. Gore, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this date mailed, postage prepaid, a true and correct copy of the above **BRIEF FOR THE APPELLEE** to the following:

Honorable Marcus D. Gordon
Circuit Judge, District 8
P. O. Box 220
Decatur, MS 39327

Honorable Mark Duncan
District Attorney, District 8
P.O. Box 603
Philadelphia, MS 39350

William DWAYNE Savell, *Pro Se*
MDOC #106847
S. M. C. I.- 2, E-1, A-Zone
P.O. Box 1419
Leakesville, MS 38451

This the 13th day of May, 2011.



BILLY L. GORE
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