IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 95-KA-01357 COA

JAMES MARVIN JONES, JR. A/K/A JAMES JONES, JR. **APPELLANT**

v.

STATE OF MISSISSIPPI **APPELLEE**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	08/16/95
TRIAL JUDGE:	HON. GEORGE C. CARLSON JR.
COURT FROM WHICH APPEALED:	PANOLA COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	DAVID L. WALKER
ATTORNEYS FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: JOLENE M. LOWRY
DISTRICT ATTORNEY:	ROBERT L. WILLIAMS
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	GUILTY OF MURDER; SENTENCED TO SERVE A TERM OF LIFE IN THE MDOC
DISPOSITION:	AFFIRMED - 10/21/97
MOTION FOR REHEARING FILED:	10/30/97
CERTIORARI FILED:	
MANDATE ISSUED:	2/4/98

BEFORE THOMAS, P.J., HERRING, AND SOUTHWICK, JJ.

HERRING, J., FOR THE COURT:

James Marvin Jones, Jr., was convicted of murder on August 10, 1995, by a jury in the Circuit Court of Panola County, Mississippi. At trial, the victim, identified as Willie Joiner, was shown to have been stabbed and beaten with both a brick and a hammer. In addition, the body had been run over by a motor vehicle. Finally, the victim's throat had been cut, and he was thrown into a culvert prior to

death.

After his conviction, Jones was sentenced to serve a term of life imprisonment in the custody of the Mississippi Department of Corrections. He now appeals to this Court and contends that his right to a fair trial was denied because several incriminating items of evidence were improperly introduced into evidence against him as a result of an illegal search of his vehicle, and that involuntary statements made by him to law enforcement officers in which he admitted being involved in a violent struggle with the victim should not have been admitted into evidence. In addition, Jones alleges that the trial court committed reversible error in allowing the jury to view gruesome photographs of the victim which were not necessary to prove the State's case, and that the trial court erred in allowing the State's expert witness to testify to information not previously supplied to the Appellant concerning the victim's cause of death. Jones also asserts that the jury's verdict of guilty was against the overwhelming weight of the evidence. Finding no reversible error, we affirm.

I. THE FACTS

Ruby Spain, a resident of Sardis, Mississippi, awoke at approximately 3:30 A.M. on October 9, 1993. Shortly thereafter, she heard noises outside in front of her residence, and she accurately concluded that two men were outside fighting. She heard one man say, "Man, you going to kill me," and the other man responded, "You did me wrong, you did me wrong." Ms. Spain testified that she could hear the sounds of the blows being administered and finally heard one of the men yell, "Please somebody help me, please somebody help me." At this point, Ruby Spain called the police and turned her porch light on, thinking that her doing so would stop the violence. However, the fight and screams for help continued. When she looked outside, she could see one man beating another, again and again, but was unable to identify either of the two men.

After her effort to stop the altercation by turning her porch light on proved to be unsuccessful, she turned the porch light off and waited for the police to come. The pleas for help continued for a while, and then all was quiet. When a motor vehicle pulled up to the house, Ms. Spain thought the police had arrived, and she turned the porch light back on and went outside. Instead, she was surprised to see the Appellant, James Jones, Jr., whom she had known for many years. He was driving a maroon Cadillac. When Ms. Spain asked Jones what was going on, he responded that one of his buddies was drunk. He then picked up a jacket off the ground and another unidentified object which had been lying near a telephone post. After placing these items in his vehicle, he dragged Willie Joiner to his automobile and placed him in the vehicle on the passenger side. Jones then drove away with no explanation. Joiner was apparently still alive when Jones drove away because Ms. Spain could hear Joiner moaning at the time he was placed in the Cadillac by Jones.

After Jones had driven away, Officer Earnest Bradley of the Sardis Police Department arrived at the Spain residence. He immediately noticed a large amount of blood in the street and yard. He also observed a brick directly in front of the house and a belt buckle in the grass. He collected these two items and interviewed Ruby Spain. She informed Officer Bradley of the fight which she had heard and witnessed and identified James Jones, Jr. as the person who was present immediately after the fight had ended at her home. She stated that one of the participants in the fight had an object in his hand and also gave Bradley a good description of the vehicle being driven by Jones. With this information, Officer Bradley began to search for Jones and his automobile.

Bradley testified that while traveling in an easterly direction, he encountered an automobile that matched the description of the vehicle described by Ms. Spain. When he pulled the vehicle over, he found that James Jones, Jr. was driving. Bradley also noticed that Jones was wearing short pants and was covered with blood from head to toe. At the officer's request, Jones then followed Bradley in his vehicle back to the Sardis Police Station. While at the police station, Bradley and Officer Charles Kereczman made a visual search of the Appellant's vehicle and recovered a jacket soaked in blood, a hammer, a razor and razor blade, and one tennis shoe. While this search was being conducted, Jones was confined inside the police station building.

Gerald Rogers was the Sardis Chief of Police on October 9, 1993. He was notified of the incident involving Jones by Officer Bradley at approximately 5:30 - 6:00 A.M. on that day. Rogers instructed Bradley to hold Jones for questioning. It was during this period that the Jones vehicle was searched, and Jones was allowed to get some sleep. At approximately 11:00 A.M. on the morning of October 9, Chief Rogers had Jones brought to his office to give a statement. Once Jones entered the Chief's office, he was advised of his *Miranda*[(1)] rights, including his rights to remain silent and to consult with an attorney. However, Jones refused to sign a written waiver of those rights and stated that he desired to consult with a lawyer. What happened next is in dispute.

In a hearing held outside the presence of the jury to determine whether any statement given by the Appellant should be suppressed, Jones contended that Chief Rogers continued to urge him to give a statement, notwithstanding his request for an attorney. Jones also testified that Rogers appeared angry and called Officer Kereczman into his office. Jones stated that at this point he felt threatened by the two officers, agreed to give a statement, and signed a waiver of his *Miranda* rights in front of them.

Chief Rogers, on the other hand, testified that once Jones requested an attorney, he was asked no further questions until he voluntarily changed his mind and agreed to make a statement after all. Rogers testified that he informed Jones that he could secure a lawyer on his own or that he (Rogers) would "get one for you." Rogers further stated that Officer Kereczman was present when Jones changed his mind and that neither he nor Kereczman threatened or coerced Jones in any way, nor did they promise him any leniency if he decided to make a statement.

All parties agree that Jones ultimately signed a written waiver of his *Miranda* rights during his initial interview with Rogers. Rogers testified that Jones admitted that he had been in a fight with the decedent, Willie Joiner, and hit him several times in his vehicle. However, Jones told Rogers that he let Joiner out of his vehicle at an apartment complex, alive and well. Rogers took notes of this oral statement by Jones, and an unsigned statement of Jones was prepared. Jones then directed the officers to a street corner (where Mrs. Spain resided) where the fight with Joiner allegedly took place, where signs of blood and of a violent struggle were evident. However, the body of Willie Joiner was not found.

Soon after the officers and Jones returned to the police station, Jones changed his story and admitted hitting Joiner with a hammer. He then directed Chief Rogers to a second location, where the body of Willie Joiner was found in a culvert under a bridge. At approximately 2:50 P.M. on October 9, Jones signed a second waiver of his *Miranda* rights and also signed a statement in which he confessed to killing Willie Joiner. In his confession, Jones said that he and Joiner had been together at a bar on the

previous evening. Joiner asked him for a ride home, and at some point during the ride, Joiner struck Jones in the head with a brick. The two men struggled, and Joiner eventually ran from the automobile with Jones in hot pursuit. Jones threw Joiner to the ground and then began striking Joiner in the head with the same brick. Jones put Joiner back in his vehicle and later struck him in the head several times with a hammer when Joiner began to struggle once again.

When Jones reached the bridge and culvert north of Sardis where the body was eventually found, Jones rolled Joiner out of the vehicle and into the culvert, after cutting Joiner's throat with a razor blade. Although not specifically stated in his written confession, Jones also stabbed Joiner and ran over him with the motor vehicle, prior to disposing of the body. As stated above, Jones was covered with blood at the time of his arrest and also had suffered numerous bruises and scars, and had been bitten on at least two occasions.

Dr. Steven Hayne, a pathologist, performed an autopsy on the body of Willie Joiner. Dr. Hayne stated that it is probable that Joiner was still alive when his throat was cut since blood was found in the victim's trachea. Jones presented only his mother, Bennie Jones, as a witness in his defense. She testified to the numerous injuries sustained by Jones in support of his claim that he only acted in self-defense during his encounter with Willie Joiner. The record confirms that the jury was instructed on the Appellant's claim of self-defense. Nevertheless, the jury convicted Jones of murder, and he has now perfected this appeal.

II. ISSUES

Jones raises the following issues for consideration on appeal, which are stated verbatim as shown in the Appellant's brief:

> A. WHETHER THE CIRCUIT COURT JUDGE ERRED IN ALLOWING APPELLEE TO INTRODUCE ITEMS FOUND IN APPELLANT'S CAR OBTAINED THROUGH AN ILLEGAL SEARCH OF SAID VEHICLE.
>
> B. WHETHER THE CIRCUIT COURT JUDGE ERRED IN ALLOWING APPELLEE TO INTRODUCE APPELLANT'S STATEMENTS BECAUSE THE AFORESAID STATEMENTS WERE TAKEN IN VIOLATION OF THE APPELLANT'S CONSTITUTIONAL RIGHTS AND WERE INVOLUNTARY.
>
> 1) APPELLANT'S STATEMENTS WERE TAKEN IN VIOLATION OF HIS CONSTITUTIONAL RIGHT TO HAVE AN ATTORNEY SINCE APPELLANT REQUESTED AN ATTORNEY PRIOR TO HIS STATEMENTS BEING TAKEN.
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> 2) APPELLANT'S STATEMENTS WERE COERCED AND NOT GIVEN VOLUNTARILY.
>
> 3) APPELLANT'S STATEMENT GIVEN TO OFFICER KENNY DICKERSON SHOULD ALSO BE SUPPRESSED AS IT WAS THE FRUIT OF AN ILLEGAL INTERROGATION.
>
> C. WHETHER THE CIRCUIT COURT JUDGE ERRED IN NOT GRANTING THE APPELLANT'S REQUEST FOR A MISTRIAL WHERE THE APPELLEE VIOLATED THE DISCOVERY RULES BY FAILING TO PROVIDE THE APPELLANT WITH THE FACTS AND ADDITIONAL OPINIONS RENDERED BY THE APPELLEE'S EXPERT WITNESS,

DR. STEVEN T. HAYNE.

D. WHETHER THE CIRCUIT COURT JUDGE ERRED IN NOT GRANTING APPELLANT'S MOTION FOR DIRECTED VERDICT AT THE CLOSE OF APPELLEE'S CASE IN CHIEF AND AT THE CLOSE OF APPELLANT'S CASE IN CHIEF AS THE VERDICT OF THE JURY IS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

E. WHETHER THE CIRCUIT COURT JUDGE ERRED IN ALLOWING THE APPELLEE TO ADMIT INTO EVIDENCE GRUESOME PHOTOGRAPHS OF THE DECEDENT AS THEY WERE NOT NECESSARY TO PROVE APPELLEE'S CASE AND WERE INTRODUCED FOR THE SOLE PURPOSE OF INFLAMING THE JURY.

III. ANALYSIS

We will address each issue raised by Jones in the sequence in which they were listed above.

A. DID THE TRIAL COURT ERR IN ALLOWING THE STATE TO INTRODUCE ITEMS FOUND IN THE APPELLANT'S AUTOMOBILE WHICH WERE OBTAINED THROUGH AN ILLEGAL SEARCH OF THE VEHICLE?

During the trial of this action on its merits, the jury was allowed to consider several items of evidence that were found in Jones's vehicle. These items, which included the bloody jacket, a hammer, a razor, a razor blade, and a tennis shoe, were recovered by Officers Bradley and Kereczman when they searched the maroon Cadillac at the Sardis Police Station parking lot. At the time of the search, Jones was in police custody but had not been formally arrested or charged. According to the testimony, Bradley thought the search occurred at some time around 5:00 A.M. on the morning of October 9, 1993. However, Kereczman stated that he did not arrive at work on that day until 7:40 A.M. Thus, we will assume that the search occurred at some time after 7:40 A.M.

A hearing was held outside the presence of the jury to determine whether or not the jacket and other items found in the vehicle should be suppressed and not considered by the jury. The State contended that the evidence was recovered either (1) as a result of a valid search incident to arrest or (2) as a result of a valid inventory search conducted at the police station pursuant to standard procedures of the Sardis Police Department. The trial court ruled that the jacket and other items found in the vehicle were admissible evidence, since they were recovered as a result of a valid search *incident to arrest*, even though no search warrant had been issued.

The Fourth Amendment to the Constitution of the United States protects all of our citizens from unreasonable search and seizure. The Amendments reads as follows:

> 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.

In most cases, the Fourth Amendment requires law enforcement officers to obtain a search warrant based upon probable cause, before searching the private property of an individual. However, this rule is now subject to several exceptions by virtue of decisions of the United States Supreme Court and the Mississippi Supreme Court which have interpreted the meaning of the Fourth Amendment.

One such exception is found in *Townsend v. State*, 681 So. 2d 497, 501 (Miss. 1996) where the Mississippi Supreme Court (citing *New York v. Belton*, 453 U.S. 454, 460 (1981)) stated: "As a general rule, a policeman making a lawful custodial arrest of the occupant of an automobile may search the automobile *'as a contemporaneous incident of that arrest.'"* (emphasis added). *See also Ferrell v. State*, 649 So. 2d 831, 833 (Miss. 1995), which states that a warrantless search of an automobile incident to arrest is "founded upon the reasonable concern that the arrestee might have a weapon on his person or within reach, and that he may attempt to destroy evidence which is within his grasp." Thus, if we were convinced that the search of the Appellant's vehicle by Bradley and Kereczman was made "incident to arrest" as stated by the trial court, we would have been able to affirm the trial court's ruling on this issue without further discussion. However, we conclude that the search of the Cadillac was not incident to arrest, since the search was made several hours after Jones had been confined and was awaiting his conversation with the Sardis Chief of Police.

In *Preston v. United States*, 376 U.S. 364, (1964), the United States Supreme Court reversed Preston's conviction where the search of his vehicle was not undertaken until the defendant had been arrested and taken to the police station, and where his vehicle had been towed to a garage. "Once an accused is under arrest and in custody, then a search made at another place, without a warrant is simply not incident to the arrest." *Id.* at 367. *See also Fields v. State*, 382 So. 2d 1098, 1101 (Miss. 1980). In the case *sub judice*, it is uncontroverted that on October 9, 1993, Jones was effectively under arrest when he was taken into custody and held for questioning around 5:30 A.M. on October 9, 1997. *See Blue v. State*, 674 So. 2d 1184, 1202 (Miss. 1996). The search of the vehicle occurred around 7:45 A.M., over two hours later. Thus, since Jones was firmly in police custody at the time of the search, and there was no danger that Jones could procure a weapon or destroy any evidence found in the vehicle, we hold that the search of the Appellant's vehicle was not incident to arrest. Nevertheless, we hold that the search was valid, for the reasons stated below.

In *Carroll v. United States*, 267 U.S. 132, 147 (1925), the United States Supreme Court stated:

> On reason and authority the true rule is that if the search and seizure without a warrant are made upon probable cause, that is, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction, the search and seizure were valid.
>
> . . . .
>
> The right to search and the validity of the seizure *are not dependant on the right to arrest.* They are dependent on the reasonable cause the seizing officer has for the belief that the contents of the automobile offend against the law.

Id. at 149, 158-59 (emphasis added).

The rule espoused in *Carroll* was later refined in *Chambers v. Maroney,* 399 U.S. 42 (1970), where

the United States Supreme Court reiterated that in determining what circumstances justify a warrantless search, the court has consistently distinguished between searches of an automobile as opposed to searches of a home or office. *Id.* at 47. Moreover, a warrantless search of a vehicle was authorized in "exigent circumstances" where the law officer has probable cause to believe that the contents of the vehicle "offend against the law." In this regard, the United States Supreme Court stated:

> For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment.
>
> On the facts before us, the blue station wagon could have been searched on the spot when it was stopped since there was probable cause to search and it was a fleeting target for a search. The probable cause factor still obtained at the station house and so did the mobility of the car unless the Fourth Amendment permits a warrantless seizure of the car and the denial of its use to anyone until a warrant is secured. In that event there is little to choose in terms of practical consequences between an immediate search without a warrant and the car's immobilization until a warrant is obtained.

Id. at 51. In commenting on a set of facts with some similarity to the case *sub judice*, the Supreme Court in *Chambers* observed that it was not unreasonable for the officer to conduct his search of the vehicle at the station house where the arrest took place late at night in an impractical and perhaps unsafe setting to conduct a search. *Id.* at 52.

The exception to the Fourth Amendment's warrant requirement has become known as the "automobile exception," which is distinct from a warrantless search incident to arrest. The automobile exception is applicable only where an officer has probable cause to believe that an automobile contains evidence of a crime. A warrantless search incident to arrest deals with the much narrower situation where an officer in the process of an arrest immediately makes a search to protect himself or to preserve evidence. Our Mississippi Supreme Court has recognized the broad "automobile exception" to the Fourth Amendment and recently stated:

> [W]hen a search involves a vehicle, there are generally sufficient exigent circumstances which override the necessity of a law enforcement officer obtaining a search warrant through a neutral magistrate, thus a lawful search may be performed. "Police officers who have legitimately stopped an automobile and who have probable cause to believe that contraband is concealed somewhere within it may conduct a warrantless search of the vehicle as thorough as a magistrate could authorize a warrant."

Jackson v. State, 689 So. 2d 760, 765 (Miss. 1997) (quoting Roby v. State, 419 So. 2d 1036, 1038 (Miss. 1982)). *See also Wolf v. State*, 260 So. 2d 425, 530-31 (Miss. 1972).

It is obvious that Officer Bradley had probable cause to stop and search the Appellant's vehicle on October 9, 1993. Bradley had been given a statement by Ms. Spain which informed him that a crime had probably been committed and that Jones was the probable perpetrator of the crime. When Bradley stopped the maroon Cadillac described by Ms. Spain, he found Jones covered with blood. At

this point, Officer Bradley would have been within Fourth Amendment guidelines to conduct an immediate search of the vehicle incident to arrest or subject to the automobile exception. However, we hold that it was not unreasonable for him to make the search at the police station, especially considering the lateness of the hour and the unknown circumstances the officer was facing. *See Chambers*, 399 U.S. at 52; *United States v. Johns*, 469 U.S. 478, 483 (1985) (involving drugs which were legally seized in trucks at a remote airstrip after a warrantless search, and an additional warrantless search was conducted *three days later*, all based upon the initial probable cause to conduct a search).

Before we leave this issue, we feel it necessary to again remind law enforcement officers of the importance of obtaining search warrants. If at all possible, a search warrant should be obtained. As stated by the Mississippi Supreme Court in *Wolf v. State*:

> The officer who makes a warrantless search when there is time to obtain a search warrant takes a calculated risk of having his efforts nullified by the suppression of the evidence if the search is determined to be invalid. Officers will be well advised to obtain a search warrant whenever practical.

Wolf, 260 So. 2d at 431. This advice, although twenty-five years old, is of the utmost importance, and we do not validate the warrantless search in the case *sub judice* lightly. We so hold only because of the fact that sufficient probable cause existed to believe the Appellant's automobile contained evidence of a crime and because there existed exigent circumstances to justify the search. Those exigent circumstances are found in the mobile nature of the vehicle, the fact that Jones was covered in blood, and the fact that the police officer was unsure of the condition of the alleged victim or whether or not there really was a victim. *See Sanders v. State*, 678 So. 2d 663, 668 (Miss. 1996) (finding that evidence seized without a warrant from an automobile is admissible if there is probable cause and an exigency).

We also note that the State contends that the search of Jones's car was a valid inventory search. However, the record reveals no foundation as to the Sardis Police Department's normal procedures for conducting inventory searches, or as to whether those procedures were followed in this case. Thus, we do not possess enough information to comment on this issue.

> B. DID THE CIRCUIT COURT ERR IN ALLOWING THE STATE TO INTRODUCE THE APPELLANT'S STATEMENTS BECAUSE THEY WERE INVOLUNTARY AND TAKEN IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS?

After he was taken into custody, Jones gave two statements to the police and ultimately led police officers to the culvert where he had disposed of Joiner's body. Both of these statements were made after Jones initially invoked his right to an attorney under *Miranda v. Arizona*. Once a suspect has asked for an attorney, all custodial interrogation must cease until an attorney is present. *Miranda v. Arizona*, 384 U.S. 436, 479 (1966). However, if the suspect voluntarily engages the police in further conversation concerning the alleged crime, this right is waived. *Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981).

In the case *sub judice*, Jones claimed that Chief Rogers urged him to talk even after he invoked his Fifth Amendment right to counsel pursuant to *Miranda*. Chief Rogers, on the other hand, testified

that he made no such suggestion, but merely reaffirmed the fact that an attorney would be provided for Jones. The Appellant claimed that he felt threatened by Chief Rogers and Officer Kereczman and was coerced into signing the waiver of rights and giving a statement. However, it is undisputed that no threats or promises were made by the officers.

This issue was argued in a suppression hearing immediately before trial. The trial judge ruled that the waiver of rights was given voluntarily and stated that:

> The Court is satisfied, it's been proven to the Court's satisfaction, beyond a reasonable doubt, that the defendant had initially invoked his right to a lawyer, then voluntarily gave up that right without any further police involvement, or coercion, or intimidation, or initiation on the part of police, and the defendant then voluntarily made the statement to law enforcement, having initially invoked his right to a lawyer, giving that right up without any police involvement, and making the statement to law enforcement. As indicated earlier, the law enforcement, once a defendant invokes his right to a lawyer, they certainly have to adhere to that right, but at the same time, they do not have to turn a deaf ear, they don't have to tell the defendant, we don't care what you want to say to us, we're not talking to you.

Our standard of review regarding trial court rulings at suppression hearings is well settled:

> Once the trial judge has determined at a preliminary hearing, that a confession is admissible, the defendant/appellant has a heavy burden in attempting to reverse that decision on appeal. "Such findings are treated as findings of fact made by a trial judge sitting without a jury as in any other context. As long as the trial judge applied the correct legal standards, his decision will not be reversed on appeal unless it is manifestly in error, or is contrary to the overwhelming weight of the evidence." "Where, on conflicting evidence, the court makes such findings, this Court generally must affirm."

Hunter v. State, 684 So. 2d 625, 633 (Miss. 1996) (citations omitted). *See also Alexander v. State*, 610 So. 2d 320, 326 (Miss. 1992).

The record reveals that in the case *sub judice*, the trial judge applied the correct legal standard, heard evidence from both sides, and found that the statement was given voluntarily. In light of the standard of review mentioned above, we cannot say that the trial court was manifestly wrong or that its decision was contrary to the overwhelming weight of the evidence. Thus, we hold that there was no error in allowing the statements to be admitted and that this assignment of error is without merit.

> C. DID THE CIRCUIT COURT ERR IN NOT GRANTING THE APPELLANT'S REQUEST FOR A MISTRIAL WHERE THE STATE VIOLATED THE DISCOVERY RULES BY FAILING TO PROVIDE JONES WITH THE FACTS AND ADDITIONAL OPINIONS RENDERED BY THE STATE'S EXPERT WITNESS, DR. STEVEN T. HAYNE?

During the State's case-in-chief, Dr. Steven T. Hayne was called to give his opinion as to Joiner's cause of death. During pre-trial discovery proceedings, the State informed Jones that Dr. Hayne would testify that Willie Joiner was alive at the time his throat was cut, based upon his opinion that blood was found in Joiner's trachea during the autopsy performed by Hayne. However, at trial Dr. Hayne gave an additional reason for his opinion. During re-direct examination, Dr. Hayne stated that

he believed that Joiner was still alive when his throat was cut because of the amount of blood located in each of the body organs. While Dr. Hayne was giving his opinion in front on the jury, Jones did not object. Only several minutes later, after the State had concluded its questioning of Dr. Hayne, did Jones object to the testimony. In ruling upon the objection, the trial court observed that Jones should have objected before the opinion testimony had been given in open court. However, the court agreed with Jones that the testimony was improper. Thus, the trial judge issued a cautionary oral instruction to the jury and ordered the members of the jury not to consider Dr. Hayne's testimony regarding the amount of blood found in the decedent's body organs. The jury was also instructed in writing by the court at the close of the trial to disregard this testimony .

Jones now argues that the trial court's instructions for the jury to disregard Dr. Hayne's testimony were was not sufficient to ensure him a fair trial. Thus, he requests that his conviction be reversed because the trial court erred in not granting a mistrial. The State asserts that this issue is both procedurally barred due to the lack of a timely objection and that the cautionary instructions of the trial court effectively removed any prejudice that might otherwise have been suffered by Jones. We agree with the State and hold that Jones has shown no prejudice caused by Dr. Hayne's cumulative testimony, and further hold that the trial judge did not abuse his discretion in not granting a mistrial. The cautionary instructions given by the trial court cured any possible prejudice created by the alleged discovery violations. Absent such showing of prejudice, or a showing of an abuse of discretion, we will not reverse on this issue. *Brown v. State,* 690 So. 2d 276, 292 (Miss. 1996).

> D. DID THE CIRCUIT COURT ERR IN REFUSING TO GRANT THE APPELLANT'S MOTION FOR DIRECTED VERDICT AT THE CLOSE OF THE STATE'S CASE-IN-CHIEF AND AT THE CLOSE OF THE APPELLANT'S CASE, SINCE THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE?

In his fourth assignment of error, Jones contends that the trial court committed reversible error when it refused to grant the Appellant's timely motions for a directed verdict based upon the "*Weathersby* Rule." The *Weathersby* Rule, first announced by our supreme court in *Weathersby v. State*, 165 Miss. 207, 147 So. 481 (1933), requires:

> [I]f the defendant and his witnesses are the only eyewitnesses to the homicide and if their version of what happened is both reasonable and consistent with innocence, and if, further, there is no contradiction of that version in the physical facts, facts of common knowledge or other credible evidence, then surely it follows that no reasonable juror could find the defendant guilty beyond a reasonable doubt under such circumstances we have always mandated that peremptory instructions be granted whether under the label of *Weathersby* or otherwise.

Green v. State, 614 So. 2d 926, 932 (Miss. 1992) (citing *Harveston v. State*, 493 So. 2d 365, 371 (Miss. 1986)). In other words, *Weathersby* tells us that where a defendant is the only eyewitness and his version of the homicide is reasonable and consistent with his innocence, then the defendant's version must be accepted as true, "unless substantially contradicted by material particulars by a credible witness or witnesses, or by physical facts or facts of common knowledge . . . ." *Tran v. State*, 681 So. 2d 514, 521 (Miss. 1996).

Our standard of review in cases where a refusal of a directed verdict is challenged requires us to consider all of the evidence in the light most favorable to the State. *Nicholson v. State*, 672 So. 2d

744, 752 (Miss. 1996). We can only reverse where, after considering the evidence, a reasonable juror could only find the defendant not guilty. *Id.*

After a review of the record before us, we rule that the evidence presented does not support an application of the *Weathersby* Rule in this case. Jones provided the police with two different versions of the events that occurred during the early morning hours of October 9, 1993. In one statement, he claimed that he left Joiner alive and well. However, in second statement, he admitted to killing Joiner and leaving him in the culvert. Jones was not the only witness to the events that occurred on that morning. Ruby Spain testified that she saw two men struggling outside her house and saw Jones drag an unconscious companion to his vehicle and drive off. The physical evidence clearly indicated that Joiner was subjected to a series of brutal attacks, with some of these attacks occurring well after there may have been any need for self-defense. Thus, the physical evidence alone provides at least some contradiction of the Appellant's version of what happened on the morning of October 9. As stated, we find that the *Weathersby* Rule does not apply to this case. We further find that the evidence, when viewed in the light most favorable to the verdict of guilty, is not of such character that a reasonable juror could find only for Jones. This issue has no merit.

> E. DID THE CIRCUIT COURT ERR IN ALLOWING THE STATE TO ADMIT INTO EVIDENCE GRUESOME PHOTOGRAPHS OF THE DECEDENT, SINCE THEY WERE NOT NECESSARY TO PROVE THE STATE'S CASE AND WERE INTRODUCED FOR THE SOLE PURPOSE OF INFLAMING THE JURY?

During the testimony of Donna Stevens, the State offered several photographs of the body of Willie Joiner into evidence. These photographs depict the extent of the injuries of the victim, the position and location of the body, and the enormous amount of blood loss. Jones objected to these photographs at trial and now appeals from the trial court's ruling which allowed the photographs to be considered by the jury.

In support of his contention that the trial court committed reversible error in ruling that the photographs were admissible into evidence, Jones relies on *Sudduth v. State*, 562 So. 2d 67 (Miss. 1990). In *Sudduth*, the Mississippi Supreme Court held that "photographs of the victim should not ordinarily be admitted into evidence where the killing is not contradicted or denied, and the *corpus delicti* and the identity of the deceased have been established." *Id.* at 69. However, *Sudduth* affirmed and allowed the admission of the photographs before it and went on to state that "[p]hotographs of bodies may nevertheless be admitted into evidence in criminal cases where they have probative value and where they are not so gruesome or used in such a way as to be overly prejudicial or inflammatory." *Id.* at 70. Furthermore, the Mississippi Supreme Court has held that "photographs of a victim have evidentiary value when they aid in describing the circumstances of the killing. . . ." *Westbrook v. State*, 658 So. 2d 847, 849 (Miss. 1995). The admissibility of photographs rests within the discretion of the trial court. *Brown v. State*, 690 So. 2d 276, 288 (Miss. 1996). In applying these standards to the case before us, we hold that the trial court did not abuse its discretion in admitting the photographs. While the photographs are certainly unpleasant, they were relevant in that they were inconsistent with Jones's claim of self-defense, and they assisted the jury in obtaining a greater understanding of the circumstances that led to the death of Willie Joiner during the pre-dawn hours of October 9, 1993. Thus, we find that this issue has no merit, and we affirm.

THE JUDGMENT OF THE PANOLA COUNTY CIRCUIT COURT OF CONVICTION OF MURDER AND SENTENCE OF LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. ALL COSTS OF THIS APPEAL TO BE TAXED TO THE APPELLANT.

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.

1. *See Miranda v. Arizona*, 384 U.S. 436 (1966).