

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

STATE OF ALABAMA,

PLAINTIFF,

VS.

RONALD PATRICK SWINEY,

DEFENDANT.

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CASE NO. CC-88-077



MOTION FOR ACQUITTAL OR, ALTERNATIVELY, MOTION FOR NEW TRIAL

Comes now the Defendant, Ronald Patrick Swiney, by and through his attorney of record, Richard W. Bell, and moves this Honorable Court to enter a judgment of acquittal in favor of the Defendant or, alternatively, to grant him a new trial in the above-styled cause. The Defendant assigns the following grounds, separately and severally, in support of said motion:

1. That the State of Alabama failed to prove a prima facie case against the Defendant in that there was no testimony by the State's witnesses that would create a logical nexus between the weapon and the death of Betty Swiney and Ronald Pate.

2. That the verdict of the jury is against the greater weight of evidence in this cause.

3. That the Defendant, Ronald Patrick Swiney, had previously filed a Motion for Acquittal at the close of the State's case and had renewed a Motion for Acquittal at the close of the Defendant's case. Both motions were denied

8-11-89 Taken under consideration by the Court. Order to follow

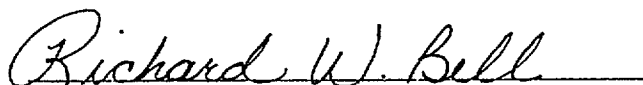
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by the trial court and the Defendant assigns error to the denial of said motions for acquittal. The Defendant states that failure of the trial court to enter a judgment of acquittal in favor of the Defendant required the Defendant to testify in his defense thereby violating the mandates of the Fifth Amendment to the Constitution of the United States.

4. That the trial court erred in failing to grant a mistrial based upon the continued statements of the State's witness, Nell Snow, in referring to the Defendant as a "murderer" and referring to the fact that the Defendant "murdered" the deceased, Betty Swiney.

5. That the trial court erred as a matter of law in failing to direct a verdict of acquittal to the charge of capital murder and murder due to the fact that the deceased, Betty Swiney, was engaged in an act of adultery at the time of her death.

Respectfully submitted,



RICHARD W. BELL
ATTORNEY FOR THE DEFENDANT
P. O. BOX 427
PELHAM, ALABAMA 35124
(205)663-9000

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion has been served upon the Hon. J. Michael Campbell, District Attorney for the Eighteenth Judicial Circuit of Alabama, Shelby County Courthouse, Columbiana, Alabama 35051 by placing same in the United States Mail, postage prepaid and properly addressed, on this the 11th day of July, 1989.

Richard W. Bell
RICHARD W. BELL

ORAL ARGUMENT REQUESTED

NOTICE OF HEARING

This Motion is set for hearing before the Hon. John E. Rochester on the 11th day of Aug., 1989, at 10:30 o'clock A. m. at the courthouse in Columbiana, Alabama.