

August 17, 1990

IN THE COURT OF CRIMINAL APPEALS

STATE OF ALABAMA

RONALD PATRICK SWINEY,	*	
	*	
APPELLANT,	*	
	*	
VS.	*	CASE NO. CC-88-077
	*	DATE OF JUDGMENT: 6/13/89
STATE OF ALABAMA,	*	DATE OF DENIAL OF POST-
	*	JUDGMENT MOTION: 10/11/89
APPELLEE.	*	

MOTION UNDER RULE 39 (K) OF THE ALABAMA RULES OF
APPELLATE PROCEDURE TO ADD AN ADDITIONAL
OR CORRECTED STATEMENT OF FACTS

COMES THE APPELLANT, Ronald Patrick Swiney, by and through his Attorney of Record, Richard W. Bell, and, pursuant to Rule 39 (K) of the *Alabama Rules of Appellate Procedure*, moves this Honorable Court to add to its memorandum opinion the following statement of facts:

1. (TR-327) Leslie Snow testified as the father of the deceased, Betty Swiney. His testimony is basically that of a *corpus* witness for the State to establish the *corpus delecti*. Nothing substantive of the events of the charge against the Defendant were stated by Mr. Snow.

2. (TR-359) Ena Bristow testified as the mother of the deceased, Ronnie Pate. She described some personal habits of her son and that she had seen him drive away from her residence on the afternoon of his death. Mr. Bristow was a witness to establish the *corpus delecti*.

3. (TR-392) Leonard Griffin testified as an Alabaster Police Officer who had seen and talked with the Defendant on the afternoon of December 10, 1987 prior to the death of Mr. Pate and Mrs. Swiney. The conversation between the Defendant and Officer Griffin took place at approximately 4:00 P.M. in the parking lot of the Food Max grocery store. Officer Griffin indicated that the Defendant inquired about the deceased, Ronnie Pate, and his wife. The Defendant indicated to Officer Griffin that Ronnie Pate may be driving his wife's car and that he was probably drinking. Leonard Griffin testified that he was one of the first officers to respond to Mrs. Swiney's home at approximately 9:30 P.M. and found Mrs. Swiney fatally wounded.

4. (TR-406) Billy Thomas testified that he was a Shelby County Sheriff's Deputy and that he was the first on the scene at Mrs. Swiney's home to take control of the premises for investigation.

5. (TR-409) Jim Walters testified that he was the first Shelby County Sheriff's Homicide Investigator on the scene. Officer Walters went to the home of the Defendant's sister with Sergeant Oliver and Chief Deputy Jones and that he took possession of a .22 caliber Charter Arms AR-7 automatic rifle from Sergeant Oliver. Jim Walters testified that he questioned the Defendant and that he didn't remember anything about the events of the evening.

6. (TR-424) Richard Fox testified that he was the second Shelby County Sheriff's Homicide Investigator on the scene and that he completed the investigation and collected evidence from the home of Mrs. Swiney.

7. (TR-446) Michael R. Smitherman testified that he was an evidence technician with the Shelby County Sheriff's Department. He testified that he photographed the scene, videotaped the scene and collected some evidence.

8. (TR-528) Frank Matheson testified that he responded to Mrs. Swiney's home on December 10, 1987 as a paramedic with the Alabaster Fire Department and that he moved Mrs. Swiney's body to administer aid.

9. (TR-536) Phil Harris testified that he was a paramedic for the City of Alabaster and that he responded to the residence of Mrs. Swiney on December 10, 1987. He stated that he moved Mr. Pate's body to administer aid.

10. (TR-539) Billy G. Thompson testified that he was the Corner of Shelby County, Alabama and that he took possession of the bodies and ordered them transported to Cooper Green Hospital in Birmingham, Alabama for autopsy.

11. (TR-547) William G. Henson, Jr. testified that he was the ambulance driver for Hank's Ambulance Service that transported the bodies of Mrs. Swiney and Mr. Pate to the Cooper Green Hospital morgue.

12. (TR-550) Sergeant Stanley Oliver testified that he was an Alabaster policeman on December 10, 1987 and that he went to the Defendant's sister's home with Jim Walters and Chief Deputy Jones (TR-559). He further stated that he took

custody of a weapon from the Defendant's mother (TR-561).

13. (TR-571) Donnie Pate testified that he was the brother of the deceased, Ronnie Pate, and that he had worked the day of December 10, 1987. He further stated that he had seen his brother driving Mrs. Swiney's automobile.

14. (TR-574) Nell Snow testified that she was the mother of the deceased, Betty Swiney, and that Pat Swiney had been to her residence during the afternoon of December 10, 1987 inquiring of the whereabouts of his wife. She testified that the Defendant had also called her on the telephone during the afternoon. It was indicated in Mrs. Snow's testimony that there had been some marital problems between Mr. and Mrs. Swiney. Mrs. Snow made statements three (3) times during her testimony that the Defendant had murdered her daughter that was made subject of the Defendant's motion for a mistrial.

15. (TR-690) Buster Brooks testified that he was a long-time friend of Betty Swiney and that Ronnie Pate and Betty Swiney had visited his residence. He further testified to hearing conversations that Betty Swiney had with the Defendant's mother and Betty Swiney's son.

16. (TR-735) Betty Marie Pate testified that she was the thirteen year old daughter of Ronnie Pate and that she had talked with her father at approximately 9:00 P.M. on December 10, 1987.

17. (TR-736) Judy Carol Bates testified that she was the ex-wife of Ronnie Pate and that she called Betty Swiney's residence on December 10, 1987 and that a man answered (TR-742).

18. (TR-742) David Higgins testified as an expert Tool and Firearms Technician employed by the State of Alabama Department of Forensic Science who had examined the bullet fragments recovered from Mr. Pate's body and Mrs. Swiney's body, along with shell hulls from the Swiney residence. He stated that there was no possibility of determining whether the shells recovered from Mr. Pate's body had been fired from the weapon marked as State's Exhibit #47 (TR-751). He did testify that the bullets from Mrs. Swiney's body were fired from the rifle marked as State's Exhibit #47.

19. (TR-768) Dr. Joseph Embry testified that as the Forensic Pathologist for the Department of Forensic Sciences of the State of Alabama that he performed the autopsies on Mr.

Pate and Mrs. Swiney. He further states that he altered his autopsy procedure upon request of the Coroner of Shelby County and did not do fingernail scraping or a vaginal swab (TR-805, 806, 807).

WHEREFORE, APPELLANT MOVES to have the above recited statement of facts as an additional or corrected statement of facts to this Court's Memorandum Opinion of August 3, 1990.

Respectfully submitted,

A handwritten signature in cursive script that reads "Richard W. Bell". The signature is written in dark ink and is positioned above a horizontal dashed line.

Richard W. Bell
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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the Appellants Rule 39(K) Motion on the Honorable Don E. Siegelman, Attorney General for the State of Alabama, 250 Administrative Building, 64 North Union Street, Montgomery, Alabama 36130 by placing said copy in the United States Mail, postage prepaid on the 17th day of August, 1990.



Richard W. Bell