

August 17, 1990

IN THE SUPREME COURT OF
ALABAMA

RONALD PATRICK SWINEY,

APPELLANT

VS.

STATE OF ALABAMA,

APPELLEE

CIRCUIT COURT OF SHELBY COUNTY

SC NO. _____

PETITION FOR WRIT
OF CERTIORARI

TO THE SUPREME COURT OF ALABAMA:

COMES your Petitioner, Ronald Patrick Swiney, and petitions this Court for a Writ of Certiorari to issue to the Court of Criminal Appeals in the above-styled cause under Rule 39, ARAP, and shows the following:

1. Petitioner was convicted of the charge of Capital Murder in the Circuit Court of Shelby County, Alabama, on June 13, 1989. The Court of Criminal Appeals affirmed the judgment on August 3, 1990. An application for rehearing was filed on August 17, 1990 and overruled on September 21, 1990.

2. A copy of the opinion of the appellate court is attached to this petition which shows the Court of Criminal Appeals case to be No. 89-95.

3. Petitioner alleges as grounds for the issuance of the writ the following:

(1) The basis of this petition for writ is that the decision is in conflict with a prior decision of the Supreme Court on the same point of law. In its opinion, the appellate court held:

That the issues raised by appellates brief were without merit, and affirmed the trial court without opinion. The issues which appellate raised, and which appellate wishes to have reviewed by this writ of certiorari are:

(1) Whether the trial court erred to reversal in failing to grant appellant's Motion for Judgment of Acquittal in that the State failed to prove a *prima facie* case?

(2) Whether the Defendant was denied a fair trial by an impartial jury due to prejudicial and inflammatory remarks of the deceased's mother during her testimony?

On both the issues as stated by appellant, the facts as presented in Brief on Appeal, and supplemented by Motion under Rule 39(k) of the *Alabama Rules of Appellate Procedure*, bring them within this Court's Rulings in *ex parte Mauricio*, 523 So.2d 87 (1987), wherein the Court held:

A finding of guilt on circumstantial evidence is based on the "inference of a fact and issue which follows as a natural consequence according to reason and common experience from known collateral facts." (emphasis added) (page p.94).

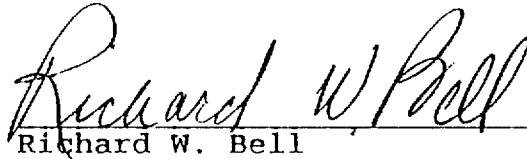
In the case of *Collum v. State*, 21 Ala.App. 220, 107 So.2d (1926), the appellate court held:

The accused, being entitled to a trial by an impartial jury, is deprived of this right when the jury is overawed or coerced by outside influence, pressure, or conduct.

These statements of the law are in conflict with the courts holding in the instant case in that the Court of Criminal Appeals fails to recognize the merits of appellant's arguments as are raised by the facts in this case. (See Appellants Brief in Support of Petitoin for Writ of Certiorari.

Petitioner respectfully request that after a preliminary examination, the Writ of Certiorari be granted and that this Court proceed under its rules to review the matters complained of, and reverse the judgment of the Court of Criminal Appeals, and for such other relief as Petitioner may be entitled.

I certify that I have this day served copies of this petition and the brief on all other parties to the appeal in the court of appeals and the Court of Criminal Appeals.

A handwritten signature in cursive script, reading "Richard W. Bell", is written over a horizontal line.

Richard W. Bell
Attorney for Petitioner
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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the Appellants Application for Re-Hearing 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