

**IN THE COURT OF APPEALS 12/17/96**  
**OF THE**  
**STATE OF MISSISSIPPI**  
**NO. 96-KA-00469 COA**

**BARBARA ANN HAMILTON a/k/a "BULL EYE"**

**APPELLANT**

**v.**

**STATE OF MISSISSIPPI**

**APPELLEE**

**PER CURIAM AFFIRMANCE MEMORANDUM OPINION**

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

TRIAL JUDGE: HON. ANDREW CLEVELAND BAKER

COURT FROM WHICH APPEALED: PANOLA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

DAVID CLAY VANDERBURG

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: DEWITT T. ALLRED III

DISTRICT ATTORNEY: ROBERT L. WILLIAMS

NATURE OF THE CASE: CRIMINAL--FELONY

TRIAL COURT DISPOSITION: CT II AGGRAVATED ASSAULT: SENTENCED TO SERVE A

TERM OF 10 YRS. IN THE MDOC WITH LAST 7 YRS. SUSPENDED, PENDING THE DEFENDANT'S FUTURE GOOD BEHAVIOR; DEFENDANT SHALL PAY ALL COSTS OF COURT

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

PER CURIAM:

Barbara Hamilton was convicted of aggravated assault. She appeals to this Court, assigning a single issue as error: whether the trial court erred in admitting her self-incriminatory statement into evidence. Finding no error, we affirm.

## FACTS

On August 25, 1995, in Batesville, Mississippi, Hamilton attacked and severely injured Gene Lee with a box-cutting knife while Lee fought with Hamilton's brother in Sharon Henderson's trailer. After she cut Lee, Hamilton ran from the trailer. Lee was taken to the hospital. Batesville Police Officer Clyde Estridge knew that Hamilton was a suspect, and when he saw her walking down Patton Avenue, he stopped his patrol car to ask her some questions. Estridge, who was in uniform, identified himself as a police officer and asked Hamilton what had happened to Lee. Hamilton told Estridge that she had cut Lee with the box-cutting blade. Even though Hamilton admitted that she cut Lee, Officer Estridge did not arrest her at that time, and he never advised her of her right to remain silent. He reported the information to the detectives, and Hamilton was arrested later.

At trial, Hamilton attempted to prevent Officer Estridge from testifying about her confession. She asserted that the confession was obtained in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966), because she was allegedly in custody at the time she made the statement. The trial court ruled that Hamilton was not in custody and was free to leave at any time during the conversation with Officer Estridge and allowed Estridge to testify about Hamilton's confession.

Hamilton appeals this decision.

## ANALYSIS

"Statements made by a *suspect* while under *custodial interrogation* are inadmissible at trial where the suspect was not Mirandized, absent a knowing and intelligent waiver of his rights." *Porter v. State*, 616 So. 2d 899, 907 (Miss. 1993) (citations omitted). However, if an interrogation is merely investigatory and "non custodial" in nature, a suspect's statements which are freely and voluntarily given are admissible even if a *Miranda* warning is not given. *Id.* (citations omitted).

The trial judge sits as fact finder to determine whether a confession is freely and voluntarily given. *Id.* This Court will not reverse such a ruling unless the trial court applied an incorrect legal standard, committed manifest error, or the decision was contrary to the overwhelming weight of the evidence.

*Thorson v. State*, 653 So. 2d 876, 887 (Miss. 1994); *see also Porter*, 616 So. 2d at 907. The standard for determining the voluntariness of a confession is the totality of the circumstances surrounding the confession. *Porter*, 616 So. 2d at 907. If, after taking the totality of the circumstances into consideration, the confession is the product of the defendant's free and rational choice, the confession is voluntary. *Id.*

Hamilton was not under arrest at the time she confessed to the assault. In fact, she was not even placed under arrest immediately after she admitted attacking Lee. She was clearly free to leave at all times during the conversation with Officer Estridge. She was not in custody at the time she confessed, and she, therefore, was not entitled to *Miranda* warnings. The trial court properly admitted the statement.

**THE JUDGMENT OF THE CIRCUIT COURT OF PANOLA COUNTY OF CONVICTION OF AGGRAVATED ASSAULT AND SENTENCE OF TEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH SEVEN YEARS SUSPENDED IS AFFIRMED. COSTS ARE ASSESSED TO PANOLA COUNTY.**

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