

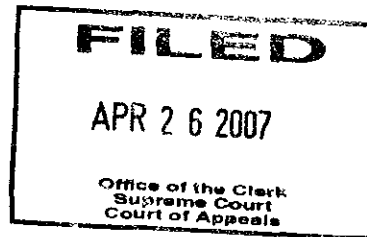
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**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**ANDRE L. CRAWFORD**

**APPELLANT**

**VS.**



**NO. 2006-KA-1871-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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## **TABLE OF AUTHORITIES**

### **FEDERAL CASES**

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### **STATE CASES**

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<b>Turner v. State, 818 So.2d 1186, 1189 (Miss. 2001) . . . . .</b>	<b>2, 7</b>

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**STATEMENT OF THE CASE**

An altercation over the purchase, after hours and on credit, of bootleg whiskey has led to the stabbing of Harold Jordan, the intended seller, who received bodily injury at the hands of Crawford, the intended buyer, when Crawford plunged a steak knife into Jordan's throat. (R. 42-46, 71)

ANDRE CRAWFORD prosecutes a criminal appeal from the Circuit Court of Clay County, James T. Kitchens, Jr., Circuit Judge, presiding.

Following trial by jury conducted on October 5, 2006, Crawford was convicted of aggravated assault. (C.P. at 46) After completion of a pre-post sentence investigation and preparation of a post-sentence report (C.P. at 48-58), Crawford was sentenced on October 6, 2006, to serve sixteen (16) years in the custody of the MDOC with four (4) years of post-release supervision. (R. 148-49; C.P. at 60-62)

Crawford's appellate lawyer, Benjamin A. Suber, an attorney with the Mississippi Office of Indigent Appeals, has filed a thorough "no arguable issues" brief tracking the procedure first

contemplated in **Killingsworth v. State**, 490 So.2d 849, 851 (Miss. 1986), later revisited and modified in **Turner v. State**, 818 So.2d 1186, 1189 (Miss. 2001), and subsequently refined, if not reformed, in **Lindsey v. State**, 939 So.2d 743 (Miss. 2005), which overruled, in part, the procedure articulated in **Turner v. State**, *supra*.

An indictment returned on April 7, 2006, charged Crawford with “. . . wilfully, feloniously, purposely and knowingly caus[ing], [on or about the 3<sup>rd</sup> day of January, 2006], bodily injury to Harold Jordan . . . with a deadly weapon, to-wit: a knife, by cutting the throat of the said Harold Jordan with the said knife, without authority of law and not in necessary self-defense . . .” (C.P. at 9)

The appellate brief filed by Mr. Suber states, *inter alia*, that he “. . . has diligently searched the procedural and factual history of this criminal action and scoured the record searching for any arguable issues which could be presented to the court on Mr. Crawford’s behalf in good faith for appellate review, and upon conclusion, has found none.” (Brief of the Appellant at 4)

Counsel has followed with skill and expertise the procedure articulated in **Lindsey v. State**, *supra*, 939 So.2d 743 (Miss. 2006), and finds “no arguable issues in the record.” (Brief of the Appellant at 4)

We wholeheartedly concur.

#### STATEMENT OF FACTS

Appellee respectfully defers to Mr. Suber’s statement of the facts which contains the basic ingredients comprising the aggravated assault in the case at bar.

It is enough to say that on or about January 2-3, 2006, Harold Jordan, a resident of West Point, was selling liquor - beer, wine, and whiskey - from his home after hours. (R. 36)

Jordan’s version of the assault is found in the following colloquy:

Q. Back in January 3<sup>rd</sup> of 2006, did you know the defendant, Andre Crawford?

A. I recognized his face, but I really didn't know his name.

Q. All right, when you say you recognized his face, explain to the ladies and gentlemen what you mean.

A. Like seeing him around the neighborhood, you know what I'm saying. I really didn't - - didn't know his name.

Q. Did you know his street name?

A. No.

Q. You didn't know any name? You couldn't put a name to him at all?

A. No.

Q. Okay. But when he showed up at your house that night he seemed familiar to you?

A. Yes, his face.

Q. Okay. What time did Michael D. Rice and Andre Crawford show up at your house?

A. It was after 1. I don't know exactly what time it was.

Q. Okay. And what was the purpose of them coming there?

A. Well, they said they was coming to buy some whiskey, but they said they left the money in the car.

Q. You say "they say?"

A. Yeah.

Q. Who did you talk to?

A. Well, I was talking to both of them.

Q. Tell the ladies and gentlemen of the jury what happened.

A. Well, they kept asking for beer, you know, a free beer and stuff, and I told them I couldn't give them one, because I had just gave Michael one that Thursday.

And then they kept - - kept saying they needed something to drink, needed something to drink. And then Michael's standing up by the door, and Andre was standing in between me and - - I mean between me and Michael. And all of a sudden they called my name, and then he just lunged at me like this, and then I felt the knife in my throat, you know.

And then it was still hanging in my throat, and then I pulled it out. They took off running. They opened - - Michael opened the door, and they took off running.

And I woke my daughter up and told her to call the police and the ambulance. And blood was squirting out, so I got a paper towel and wet it and applied pressure to it.

Q. Before the defendant lunged - -you said he lunged toward you, he called your name.

A. Yes.

Q. Who are you referring to?

A. Andre.

Q. Okay. And where was Michael D. Rice at the time?

A. He was standing at the door. By the door. (R. 38-40)

Michael Rice, an ear and eyewitness to the incident, at least in part, testified during direct examination as follows:

Q. Tell the ladies and gentlemen what happened. Why did you leave the apartment? What was your plan? What were you doing?

A. Well, I was under the impression I was just going to give him - - I was just going to give him a ride.

Q. Give who a ride?

A. Andre. Give him a ride. We went to the bootlegger, and

we stopped at the bootlegger.

Q. Okay. Where were you giving him a ride to?

A. First I thought he was going home, but we stopped by the bootlegger. He wanted to get something to drink, so we went by the bootlegger.

Q. And what happened when you got there?

A. We got in the house, and he asked him for some- - for some whiskey, but he wanted a credit, and he told them that he wasn't doing no credit, so - -

Q. Who wanted a credit?

A. Andre. And he told him he wasn't doing no credit.

Q. Who told him? You got to use names for me, Michael.

A. Mr. Harold Jordan.

Q. Okay. Told Andre he wasn't going to give him any credit?

A. Right.

Q. And what happened?

A. They had like a little argument, where they were talking back and forth. And I was telling him, he ain't going to give you nothing, man, let's go. Like that.

So after then I walked out briefly and came back in, it wasn't even a minute, you know, and I just seen him push him. I didn't - - I never did see him cut him. I didn't see no knife.

Q. Who did you see push?

A. Andre.

Q. Who did he push?

A. Mr. Jordan.



Q. Okay. You said you didn't see any knife?

A. No, ma'am.

Q. Tell the ladies and gentlemen of the jury what you saw.

A. I just saw him push him. I didn't know - - I didn't know whether he - - had cut - - was cut or not, but I saw him push him. (R. 72)

\* \* \* \* \*

Q. When you saw him push him, what happened?

A. He ran past me out the door, and I ran.

Q. Who ran past you?

A. Andre, Mr. Crawford, ran past me out the door, and I ran behind him. (R. 73)

At the close of the State's case-in-chief, the defendant's motion for a directed verdict was overruled. (R. 105-06)

The defendant, Andre Crawford, produced three witnesses in defense of the charge, but Crawford himself was not one of them. (R. 108-29)

The defense presented by Crawford was an alibi. (C.P. at 44) At the close of all the evidence, peremptory instruction was denied. (R. 133, C.P. at 45)

The jury retired to deliberate at a time not reflected by the record and returned with a verdict of, "We, the Jury, find the defendant guilty as charged." (R. 145)

A poll of the jury reflected the verdict returned was unanimous. (R. 146)

Crawford's motion for judgment notwithstanding the verdict or in the alternative for a new trial (C.P. at 65-66) was overruled on October 10, 2006. (C.P. at 67)

Thad buck, a practicing attorney in West Point, represented Crawford effectively during the

trial of this cause and perfected the defendant's appeal. (C.P. at 68)

Benjamin A. Suber, an attorney with the Mississippi Office of Indigent Appeals, is representing Crawford in his appeal to this Court. Mr. Suber has "scoured" the record and found "no arguable issues" supporting Crawford's appeal.

### **SUMMARY OF THE ARGUMENT**

We concur with the observations of appellate counsel that the present appeal is devoid of "arguable issues" supporting Crawford's appeal. **Lindsey v. State**, *supra*, 939 So.2d 743, 748-49 (Miss. 2005).

### **ARGUMENT**

#### **CRAWFORD'S APPEAL IS DEVOID OF ARGUABLE ISSUES. ACCORDINGLY, HIS CONVICTION AND SENTENCE SHOULD BE FORTHWITH AFFIRMED.**

In **Lindsey v. State**, 939 So.2d 743, 745 (Miss. 2005), this Court, citing **Smith v. Robbins**, 528 U.S. 259, 273-74, 120 S.Ct. 746, 145 L.Ed.2d 756 (2000), refined, if not reformed, the procedures for indigent criminal appeals first appearing in **Killingsworth v. State**, 490 So.2d 849 (Miss. 1986). The **Killingsworth** procedures were subsequently overruled in **Turner v. State**, 818 So.2d 1186 (Miss. 2001), which itself was overruled, at least in part, by **Lindsey v. State**, *supra*, 939 So.2d at 748-49.

We have examined the record filed in this cause and fully concur with the observations of appellate counsel. Crawford's appeal is devoid of arguable issues. Rather, Crawford is hopelessly guilty.

Mr. Suber has certified that he has mailed to Crawford, postage prepaid, a copy of his brief and correspondence "... informing Mr. Crawford that counsel finds no arguable issues in the record and that Mr. Crawford has a right to file a *pro se* brief." (Brief of the Appellant at 4)

In the event Crawford files, *pro se*, a brief or other pleading in this cause, appellee respectfully invites this Court to grant the undersigned a period of thirty (30) days to respond thereto.

### CONCLUSION

Appellee concurs with the "trained legal eye" of Crawford's appellate counsel there are no "arguable issues" in the record.

We respectfully submit that no plain error or otherwise reversible error took place during the trial of this cause and that Crawford's appeal, for want of "arguable issues," has no appeal on appeal.

Accordingly, the judgment of conviction of aggravated assault and the sixteen (16) year sentence with four (4) years of post-release supervision imposed by the trial court should be forthwith affirmed.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I, Billy L. Gore, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

**Honorable James T. Kitchens, Jr.**  
Circuit Court Judge, District 16  
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District Attorney, District 16  
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This the 26th day of April, 2007.



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