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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ANDRE L. CRAWFORD — APPELLANT

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SUPREME COURT
COURT OF APPEALS

VS. — NO. 2006-KA-1871-COA

STATE OF MISSISSIPPI — APPELLEE

SUPPLEMENTAL BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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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**

SUPPLEMENTAL BRIEF FOR THE APPELLEE

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 stuck 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.*

Crawford, in turn, has filed a *pro se* supplemental brief. This filing is the response of appellee to Crawford's supplemental brief.

An indictment returned on April 7, 2006, charged Crawford with " . . . wilfully, feloniously, purposely and knowingly caus[ing], [on or about the 3rd 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.

Nevertheless, Crawford has found what he perceives as "arguable issues." He argues (1) his indictment was fatally defective for omission of the words "serious bodily injury" which, according to Crawford, constitute an essential element of the offense of aggravated assault, and (2) the verdict

of the jury was not supported by sufficient evidence and was against the weight of the evidence because the victim testified he never saw Crawford "with a knife or pull a knife." (Crawford's Supplemental Brief at iii, 8)

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 3rd 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

Crawford claims he was at home when the crime took place. Crawford's alibi, if any, was a question to be resolved by the jury in the wake of instructions placing this defense squarely in the lap of the fact finder.

Although Jordan may never have seen the knife until after it was hanging from his throat, proof that Crawford was the man who put it there was supplied by fair inference from the testimony of both Jordan and Michael Rice. The testimony of Jordan and Rice, if true, leaves no doubt that Crawford was the man who assaulted Jordan, the bootlegger, with a knife.

The jury, of course, is the sole judge of the credibility of the witnesses and the weight and worth of their testimony. **Gathright v. State,** 380 So.2d 1276 (Miss. 1980).

Finally, it is not necessary for the indictment to allege "serious bodily injury" where, as here,

the injury is inflicted with a deadly weapon, *viz.*, a knife. **Anthony v. State,** 349 So.2d 1066, 67 (Miss. 1977). *See also* **Jackson v. State,** 594 So.2d 20, 24 (Miss. 1992).

ARGUMENT

I.

THE INDICTMENT PROPERLY CHARGED THE ESSENTIAL ELEMENTS OF THE CRIME OF AGGRAVATED ASSAULT.

Crawford claims his indictment was fatally defective because it failed to charge "serious bodily injury." This claim is devoid of merit because where, as here, the assault is committed with a deadly weapon, e.g., a knife, it is sufficient if the victim suffers "bodily injury" as opposed to serious bodily injury.

Crawford's indictment charged that Crawford:

" . . . wilfully, feloniously, purposely and knowingly caused, [on or about the 3rd 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)

In **Anthony v. State,** 349 So.2d 1066, 67 (Miss. 1977), we find the following language dispositive of Crawford's complaint:

> * * * The indictment against [Anthony] alleged that he did " . . . knowingly and purposely cause bodily injury to one Clay Lee Anthony, by cutting the said Clay Lee Anthony with a deadly weapon, to-wit: A knife . . ."
>
> * * * * * *
>
> * * * The averment that the appellant knowingly and purposely caused bodily injury to Clay Lee Anthony "with a deadly weapon," a knife, clearly categorized the assault as an aggravated assault under subsection (2) of 97-3-7 as distinguished from a simple assault and as

defined in subsection (1) of 97-3-7.

See also **Jackson v. State,** 594 So.2d 20, 24 (Miss. 1992) ["Nor is it necessary under this section for the State to prove the victim suffered 'serious' bodily injury. Mere 'bodily injury' is sufficient . . . "

Miss.Code Ann. §97-3-7 (2) reads, in its pertinent parts, as follows:

> (2) A person is guilty of aggravated assault if he * * * (b) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm; . . .

Crawford's complaint targeting the validity of his indictment is devoid of merit.

II.

THE VERDICT OF THE JURY WAS BASED UPON SUFFICIENT EVIDENCE AND WAS NOT AGAINST THE WEIGHT OF THE EVIDENCE.

Crawford's version of the facts is simply that he was not there at the time and place testified about - an alibi, if you please.

He argues

> " . . . he was at home with his family and there is no way possible he could have been present at Harold Jordan['s] house along with Michael Rice on the morning of January 2, 2006, and the reason why the State could not prove that appellant Crawford was the one who stab[bed] this man is because appellant Crawford wasn't there. This is also the reason why not one of them seen a knife." Supplemental Brief of Appellant at 7.

The jury is under no obligation to accept Crawford's alibi defense. **Lee v. State,** 457 So.2d 920 (Miss. 1984). Crawford's alibi defense simply raised an issue of fact to be resolved by the jurors. **Gray v. State,** 549 So.2d 1316 (Miss. 1989).

It is well settled the jury is under no duty or obligation to accept an alibi asserted by the

accused and his or her witnesses; rather, an alibi simply raises an issue of fact to be resolved by the jury. **Hughes v. State**, 724 So.2d 893 (Miss. 1998); **Burrell v. State**, 613 So.2d 1186 (Miss. 1993); **Lee v. State**, 457 So.2d 920 (Miss. 1984); **Johnson v. State,** 359 So.2d 1371, 1373 (Miss. 1978) ["The jury was not under a duty to accept the alibi of appellant . . ."]; **Wingate v. State,** 794 So.2d 1039 (Ct.App.Miss. 2001), reh denied, cert denied.

The jury was instructed with respect to the defendant's alibi defense and resolved the issue, fully, fairly, and finally against Crawford. "[This] court is bound by the jury findings upon an issue presented by the instruction requested by [the defendant.]" **Kinney v. State,** 336 So.2d 493, 496 (Miss. 1976). *See also* **Webster v. State,** 817 So.2d 515 (Miss. 2002), reh denied, cert denied.

Our position on this issue can be neatly summarized in only three (3) words: "classic jury issue." Because a reasonable, hypothetical juror could have easily found the testimony elicited from Jordan and Rice to be the truth, the whole truth, and nothing but the truth, Crawford's claims are devoid of merit. Put another way, the testimony was sufficient to convict Appellant of aggravated assault.

In determining whether a jury verdict is against the overwhelming weight of the evidence, the scope of review on this issue is limited in that all evidence must be construed, i.e., "weighed," in the light most favorable to the verdict." **Bush v. State**, 895 So.2d 836, 844 (Miss. 2005). All the evidence, as a matter of law, is viewed in a light most favorable to the State's theory of the case. **McClain v. State**, 625 So.2d 774 (Miss. 1993).

This includes the testimony of the victim, Harold Jordan.

In **Maiben v. State**, 405 So.2d 87, 88 (Miss. 1981), this Court announced that

> . . . . . we will not set aside a guilty verdict, absent other error, **unless it is clearly a result of prejudice, bias or fraud, or is manifestly**

against the weight of credible evidence. [emphasis supplied]

Finally, affirmation of the jury's verdict would not "sanction an unconscionable injustice." **Groseclose v. State,** 440 So.2d 297, 300 (Miss. 1983).

CONCLUSION

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

Nevertheless, Crawford has filed a supplemental brief presenting what he perceives to be "arguable issues" sufficient to justify reversing his conviction and setting him free. (Crawford's Supplemental Brief at 9)

We respectfully submit that no error, plain or otherwise, took place during the trial of this cause and that Crawford's appeal, for want of viable 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 date mailed, postage prepaid, a true and correct copy of the above **SUPPLEMENTAL BRIEF FOR THE APPELLEE** to the following:

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