

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

**RAY CULLENS**

**APPELLANT**

**VS.**

**FILED**

**APR 09 2008 NO. 2007-KA-0854-COA**

**OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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## **TABLE OF AUTHORITIES**

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**NO. 2007-KA-0854-COA**

**STATE OF MISSISSIPPI**

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**BRIEF FOR THE APPELLEE**

**STATEMENT OF THE CASE**

The grand jury of Lee County indicted defendant, Ray Cullens for Kidnaping and Aggravated Assault in violation of *Miss. Code Ann.* §§ 97-3-7(2)(b) & 97-3-53. (Indictment, cp.3-4). After a trial by jury, Judge Paul S. Funderburk presiding, the jury found defendant guilty of both charges. (C.p.56). Defendant was sentenced to 20 years on each count with 5 years suspended on each count with the sentences to run concurrently. Upon release defendant will be subject to 5 years post-release supervision. Further, defendant was ordered to pay court costs and restitution. (Sentence order, cp. 60-61).

After denial of post-trial motions this instant appeal was timely noticed.

## **STATEMENT OF FACTS**

The Statement of Fact presented by appellate counsel gives an adequate rendering of what happened for the purposes of this appeal.

## SUMMARY OF THE ARGUMENT

Appellate Counsel filed a brief asserting there are no non-frivolous issues to present to this Court, pursuant to *Lindsey v. State*, 939 So.2d 743 (Miss. 2005).

There as been no *pro se* filing by defendant.

“...[T]he appellate court must consider the case on its merits and render a decision.” *Lindsey*, ¶18.

## ARGUMENT

Counsel for defendant filed in this Court a brief certifying that he has scoured the record and concluded that there are no arguable issues supporting the appeal, i.e., there are no non-frivolous issues to present to this Court. Additionally, pursuant to *Lindsey v. State*, 939 So.2d 743 (Miss. 2005), counsel has averred in his filing that he has notified defendant via first class mail of his appeal status and right to file a *pro se* brief of any issues. (Paragraph 3, statement of counsel). The State would point out the “Certificate of Service” does not list defendant.

Be that as it may, the State has checked the docket of this Court and not found any filings listed that are not in the record.

Accordingly there is no brief to which the State may file a reply.

Under the rationale of *Lindsey*, this court must now look to the record for any issues. If this reviewing Court finds issues the attorney of record is to be advised and file a brief presenting arguments on those issues. The State would then respond.

However, at this juncture, with the filing of the Brief pursuant to *Lindsey* and no *pro se* filing of issues from defendant – the state respectfully submits the current posture on appeal is, to wit:

¶18 . . . (5) Once briefing is complete, the appellate court must consider the case on its merits and render a decision.

*Lindsey v. State*, 939 So.2d 743 (Miss. 2005).

## CONCLUSION

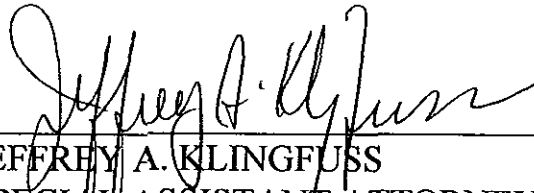
In conclusion, we submit that in accordance with the procedure outlined in *Lindsey*, this Court must determine now look to the record and render a decision.

Upon such review, the State would ask this court to affirm the jury verdicts and sentences of the trial court.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

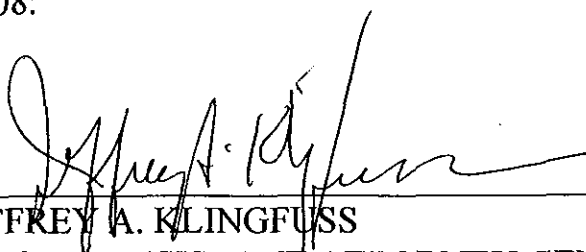
I, Jeffrey A. Klingfuss, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Paul S. Funderburk  
Circuit Court Judge  
Post Office Drawer 1100  
Tupelo, MS 38802-1100

Honorable John R. Young  
District Attorney  
Post Office Box 212  
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W. Daniel Hinchcliff, Esquire  
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This the 9th day of April, 2008.



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