

COPY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RAY CULLENS

APPELLANT

V.

FILED

NO. 2007-KA-0854-COA

JAN 07 2008

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SUPREME COURT
COURT OF APPEALS**

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF THE APPELLANT

MISSISSIPPI OFFICE OF INDIGENT APPEALS

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this court may evaluate possible disqualifications or recusal.

1. State of Mississippi
2. Ray Cullens, Appellant
3. Honorable John R. Young, District Attorney
4. Honorable Paul S. Funderburk, Circuit Court Judge

This the 26th day of January, 2008.

Respectfully Submitted,
MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:


W. Daniel Hincheliff
COUNSEL FOR APPELLANT

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BRIEF OF THE APPELLANT

STATEMENT OF THE ISSUES

None

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Lee County, Mississippi, and a judgement of conviction for the crimes of kidnapping and aggravated assault against Ray Cullen and resulting concurrent sentences of 20 years with 5 suspended, following a jury trial commenced on February 2, 2007, the Honorable Paul S. Funderburk, Circuit Judge, presiding. Ray Cullen is presently incarcerated with the Mississippi Department of Corrections.

FACTS

The state commenced it's case against Ray Cullen ["Cullen"] with the testimony of a former Shannon police officer Renaud Perry, who after receiving a 911 call, meet an officer from a

neighboring jurisdiction who was transporting an injured person, Jesus Rodriguez. Rodriguez had been beaten and stabbed. Garcia's wife arrived and directed Perry to the trailer home of co-indictee James Talley. Upon investigation, he found a bloody blanket in a van. The van was warm and the blood still fresh.(T. 70-77)

He knocked at the door of the trailer and was met by Tamara Talley, wife of James Talley. Perry observed blood in the trailer. He entered and found the Appellant in bed, pretending to be asleep.(T. 77-79)

He related on cross examination, that Garcia's wife had arrived with Pamela Keck. Keck gave Perry a statement that she had seen a large black man carry a body out of Talley's trailer and throw it in the van. Although Cullen was a large black male she did not specifically identify him. (T. 85-100)

Pamela Keck lived in the Trailer park and observed Rodriguez go to Talley's trailer with beer. Later she heard a ruckus, looked over to the trailer and saw Talley and a large black male. She had seen Cullen earlier at the trailer and believed that he was the large black man. The large man threw Rodriguez over his shoulder and into the back of the van. She dressed, went to the trailer and found saw Talley's wife and another female mopping up blood. She then went to tell to Rodriguez's wife what she had seen. She told the wife to call Rodriguez's cell phone, which rang in the Talley trailer. However, Talley's wife claimed Rodriguez left earlier. (T. 107-125)

James Talley said Rodriguez was at the trailer. He knocked Rodriguez unconscious and Cullen stabbed him with a kitchen knife. They put the victim in the van and drove him off to Nettleton. While in the van, Cullen was in the back of the van, hitting Rodriguez. He agreed Cullen was a very large man. (T. 127-136)

On cross examination, Talley allowed that he had plead guilty to these charges resulting in

a seven year sentence and revocation of his probation. (T. 137)

LaDana Scruggs was present and saw Talley and Cullen beat and stab Rodriguez.. She saw Cullen put Rodriguez in the van. (T. 1450)

Jesus Rodriguez testified through an interpreter. He was at Talley's trailer drinking when he heard the "white guy" tell the "black guy" that they would have to "do him." (T. 156-160) He identified Cullen as having stabbed him. (T. 160-161) He had been stabbed in the chest and back and his ear was slashed. (T. 164-165)

Cullen testified, denying being present at the time. He felt he was being blamed because he was black and having sex with Talley's wife. (T. 180-190)

The jury returned a verdict of guilty on both counts.

SUMMARY OF THE ARGUMENT

None

ARGUMENT

None

STATEMENT OF COUNSEL

1. I, counsel for the Appellant, hereby represent to the Court, pursuant to *Lindsey v. State*, 939 So. 2d 743 (Miss. 2005), that counsel 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. Cullen's behalf in good faith for appellate review, and upon conclusion, have found none.

2. The matters considered, reviewed and included in counsel's search were: (a) the reason for the arrest and circumstances surrounding the arrest of Ray Cullen; (b) any possible violation of Mr. Cullen's right to counsel; (c) the entire trial transcript; (d) all rulings of the trial court; possible

prosecutorial misconduct; (f) all jury instructions; (g) all exhibits, whether admitted into evidence or not; (h) possible misapplication of the law in sentencing; and (I) the indictment and all the pleadings in the record; (j) any possible ineffective assistance of counsel issues; and any other possible reviewable issues.

3. Counsel confirms that he has, on the date of the filing of this brief, mailed by first class mail, postage prepaid, a copy of this brief and correspondence informing Mr. Cullen that counsel finds no arguable issues in the record and that Mr. Cullen has the right to file a pro se brief.

4. Counsel for Appellant requests that this Court grant Mr. Cullen an additional 40 days of additional time in which to file his pro se brief, if he desires to do so.

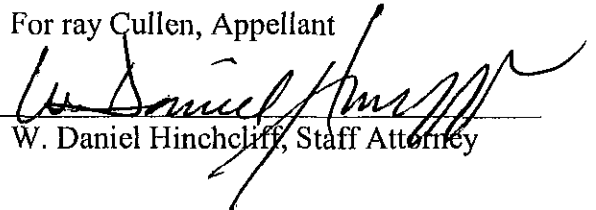
5. Counsel stands ready to prepare supplemental memoranda of law on any issues requested by this court.

CONCLUSION

There are no issues that counsel can in good faith present to this Court in the appeal on this matter.

Respectfully submitted,
MISSISSIPPI OFFICE OF INDIGENT APPEALS
For ray Cullen, Appellant

By:


W. Daniel Hinchcliff, Staff Attorney

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CERTIFICATE OF SERVICE

I, W. Daniel Hinchcliff, Counsel for Ray Cullens, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

Honorable Paul S. Funderburk
Circuit Court Judge
308 Jefferson Street
Tupelo, MS 38802

Honorable John R. Young
District Attorney, District 1
Post Office Box 212
Corinth, MS 38834-0212

Honorable Jim Hood
Attorney General
Post Office Box 220
Jackson, MS 39205-0220

This the 2nd day of January, 2008.


W. Daniel Hinchcliff
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