

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

**DARRELL MCBRIDE**

**APPELLANT**

**V.**

**NO. 2009-KA-0333-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

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**BRIEF OF THE APPELLANT**

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**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.

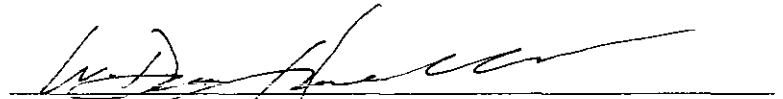
1. State of Mississippi
2. Darrell McBride, Appellant
3. Honorable Doug Evans, District Attorney
4. Honorable Clarence E. Morgan, III, Circuit Court Judge

This the 11<sup>th</sup> day of May, 2009.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:



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## **TABLE OF AUTHORITIES**

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**STATEMENT OF ISSUES**  
**STATEMENT OF THE ISSUES**

None

**STATEMENT OF THE CASE**

This appeal proceeds from the Circuit Court of Attala County, sitting in Webster County upon order for change of venue, and a judgement of conviction for the crime of murder and sentence of life imprisonment. The Honorable C. E. Morgan, III, Circuit Judge, presided over a jury trial commenced on February 9, 2009. Darrell McBride is currently incarcerated in an institution under the supervision of the Mississippi Department of Corrections.

## **FACTS**

Prior to trial, various defense motions were heard by the trial court. Motions in limine to prohibit mention of McBride's prior conviction for manslaughter, to prohibit any mention that McBride was currently serving time, to not permit mention that a DNA match of his blood was originally made through CODIS, and that McBride had attempted an escape from custody were granted. A motion concerning the gruesomeness of the video of the scene and of crime scene photos was denied upon the trial judges finding that the photos and video were relevant, not unnecessarily gruesome and that the probative value outweighed the potential prejudice. A motion for change of venue was reheard and granted. The motion to suppress McBride's exculpatory statement's was denied and trial commenced in Webster County on February 10, 2009

The State's case was primarily based upon proofs that Charles Green had been murdered and that his death was caused by multiple stabbing and slashing wounds. Almost immediately after Green's murder, Darrell McBride, ["McBride"], was treated at the local hospital's emergency room for a slice wound to his little finger on his right hand. The severity of the wound required that he be referred to a specialist in Jackson Mississippi to repair a severed tendon. He told the treating physicians, in both instances, that his hand was cut installing drywall.

Crime scene investigators found copious blood from the victim at the scene, but also recovered two drops of blood from the victim's body and several drops of blood, within the house and down the driveway which later were matched by DNA analysis to McBride.

At trial, McBride explained his blood being dripped upon the victim and dripped in and around the victim's house as having occurred while McBride tried to intervene to save Charles Green from being stabbed by another person, McBride's employer in the dry-walling business. His prior denials of knowledge of the crime were attributed to fear.

The proofs, as more specifically presented, began with the victims wife telling of how she found her slain husband, a catfish farmer. (T. 152) Nancy Green returned home around 11:30 the day of the murder. (T. 153) She observed blood in the carport and sought the help of a nearby neighbor before entering her home. The neighbor was not home and she returned. She noted the freezer open in the carport and catfish scattered around. There were two pools of blood near the door. During her cross examination, she denied that any work was being done on her home and was unaware of anyone coming to purchase catfish. (T. 158) She called the sheriff and deputies arrived on the scene within minutes. (T. 159-160) She recalled that her husband had gone to town that morning to meet with his attorney regarding the sale of his property and catfish business. (T. 160-161) She did not know the defendant.

Charles "Mic" Laurence was then a criminal investigator with the State. (T. 162) On March 4, 2004 he received a call to go to Charles Greens residence. He observed a large amount of blood in the carport; the freezer door was open with catfish filets scattered around. (T. 164)

Charles Green's body was lying in a utility room off the carport. As he went through the house, he found a jewelry box that appeared to have been rifled. There were bloody shoe-prints and drops of blood in the carport, the drops continued down the drive for a distance of 10 feet. (T. 167) He believed the perpetrator had injured himself. In response to questioning by the defense, he stated there were several people present as he arrived. (T. 168) Shoe-prints were observed both in the carport and inside the home. The victims truck door was open and it appeared that there had been rifling of the money bags within the truck, but he was unaware of anything missing. (T. 170) He agreed that the presence of McBride's blood on the scene could be subject to another explanation. (T. 170)

Dr. John Christopher Chauvin was the emergency room treating physician who saw McBride at 10:40 a.m. on the day of the murder. McBride had a laceration of his fifth finger and abrasion on his fourth, finger, both on his right hand. McBride's explanation of the injury was that he had been installing drywall and cut himself with a boxcutter. The cut required repair to the tendon and McBride to University Medical Center. (T. 172-175) He acknowledged that the admitting record showed McBride as having arrived at 10:00 a.m. (T. 176) The wound came from a sharp instrument. (T. 177)

Charles Burden, was McBride's employer in the drywalling business. McBride did not work with him that day, and he could not recall that McBride ever cut himself. (T. 176-179) He had, on a prior occasion taken McBride to Green's house where he purchased catfish. (T. 179-180)

Dr. William Lineaweaver treated McBride at UMC. He was qualified as an expert in plastic surgery. He saw McBride in March of 2002, when he came in for repair of a severed tendon on the little finger of his right hand and nerve damage. The laceration was caused by a sharp object. (T. 184-188)

Dr. Steven Hayne, after qualifying as an expert in forensic pathology, testified that the cause of death was multiple fatal stab wounds to Charles Green's chest and back, and that the manner of death was a homicide. Dr. Hayne took photographs, several samples of blood, and inked fingerprints. (T. 190-205) He was unable to give a shape of the knife, but opined that it had no hilt or guard, in response to cross examination. He also opined that the knife did not fully penetrate the body, leaving neither fist nor hilt bruising. (T. 206-208)

Arthur Steven Chancellor, was with the Mississippi Crime Lab at the time and qualified as an expert in crime scene analysis. (T. 212-213) His investigation revealed a large amount of blood in the carport and bloody foot prints.. He found blood "trailing, coming from the house into the

carport.” (T. 214) He testified that when investigating a stabbing or knife wound, he looked for evidence that the perpetrator had injured themselves, explaining that blood makes a knife very slippery, which often cause the hand to slip on a downward thrust, injuring the perpetrator, particularly the little finger. ( T. 214, 233) Such evidence would include finding blood a significant distance from the body. On this scene there was blood 25 feet away, through the kitchen and out the driveway. There were droplets of blood on the victim that were distinct, having dropped straight down and which not appear to be the victim’s blood. (T.214-217) Photographs taken by Chancellor were admitted into evidence. An objection to S-1 was over-ruled as more probative than prejudicial, not overly gruesome and “highly probative.” (T. 217) Previous objections were noted for the record on other photographs. (T. 218). It was his opinion the victim had been moved three times by dragging and had been rolled over. (T. 221,223) He tracked the offender through he house by foot prints and found three drops of blood, other drops in the drive were consistent with the offender leaving the scene. (T. 224-228) His blood collection exhibits were admitted into evidence.

The defense offered into evidence the photographs of the bloody footprints and Chancellor agreed there were no other footprints. He could not say with certainty that the blood collected came from the assailant, but stated the evidence was “probably your suspect.” (T. 238) While he conceded that there could be other explanations of the blood droplets, the only thing he could think of was “aliens.” It was his opinion that the blood came from the assailant was the “only theory that makes sense.” (T. 239) The foot prints were not measured as it would be difficult to determine an actual shoe size. (T. 242- 243) He agreed other theories could be possible but was ‘strained to imagine a different scenario.”(T. 243)

Deputy Zelig Shaw confirmed the identifying information given Dr. Chauvin matched McBride. . He further testified to having asked McBride if he had heard about Green’s murder, and



that McBride claimed to have learned of the killing from his brother who heard from his uncle that Green's throat had been "cut open or some shit." (T. 249) He claimed to have been to Green's house once with his mother to purchase catfish. He denied any knowledge of the murder. (T. 247-250) Shaw later collected blood samples from McBride who cussed and shouted. (T. 251)

Frank Shaw, an attorney in Kosciusko, testified that Green had been in his office that morning to review a land contract and left between 9:00 a.m. and 9:15 a.m. This would mean that Green got home around 9:25 a.m. (T. 252-253) He had no knowledge of any work being done on Green's house.

Mike Hood with the Mississippi Crime Lab explained the results of analysis of the recovered fingerprints. Of four latent prints, three were Green's and the fourth lacked sufficient information to identify. (T. 255-259)

Amy Winters, an expert in forensic biology, matched Green's blood to the scene through DNA, but lacked a sample from McBride to compare to the two blood drops from the living room. She performed the testing. (T. 260-269)

William H. Jones, the DNA Section Chief at the Mississippi Crime Lab in Jackson, was accepted as an expert in DNA analysis. He relied on Amy Winter's work to identify the victim's blood, and matched four different sets of stains; found on leaves outside the carport, on the living room floor, in the carport and directly from the victim's abdomen as belonging to McBride. (T. 273-289)

Upon these proofs the State rested. In their motion for a directed verdict, the defense argued that the proofs only put McBride at the scene, but did not prove he murdered Charles Green. Said motion was denied.

After receiving a *Culberson* explanation from the trial court, McBride took the stand in his

defense. (T. 291-292) He told the jury that on March 4, 2002, he was working at an unspecified house with Charles Burns when Burns suggested that they take a ride to "somewhere." (T. 292) The somewhere was the home of Charles Green. Burns, jumped from the truck, taking the keys and walked up to the house. He met with Green and they talked. As Green was reaching for fish in the freezer Burns began stabbing him.

When McBride saw Burns stabbing Green , he jumped from the truck, ran up to Burns, grabbed at the knife as he asked Burns what he was doing. Burns told him to get back in the truck. At some point Burns ran through the house and McBride followed, bleeding. When they were both back at the truck, McBride wanted to know why Burn's killed Green and complained that Burns had cut him, thereby causing his blood to be "all over the house." (T. 292-294) McBride explained that he had to step over Charles Green to enter the house, thereby accounting for the drops found on Green's abdomen.

Having been cut severely while defending Mr. Green, McBride went to the hospital. "I told them I got a sheet rock cut." (T. 294) By the time he had gone to UMC in Jackson, "everybody know Mr. Green got killed. So I knowed (sic) they was going to come and question me because my blood was there." (T. 294)

At some point, according to McBride, Burns confessed to him that he had been hired to kill Green. McBride testified about certain spending that Burns had done after the murder, such as a trip to the mountains, getting married, moving, and acquiring a pool table. (T. 295) He was scared to come forward with this information.

A hearing was held outside the presence of the jury. The State requested to be able to impeach McBride with his prior conviction for manslaughter. The trial court ruled in favor of the defense, finding the resulting prejudice would outweigh any probative value.

As McBride's testimony continued on cross examination, he claimed he was not attempting to help Charles Green, but was only "trying to see what was going on. That's why [he] reached for the knife." (T. 300), He further explained, he" tried to stop Burns "and see what was going on." He got between Burns and Green as Burns stabbed, trying to "pull them apart" as he asked Burns "what was going on." (T.300-301)

McBride explained he had lied to the Doctors and the police because he was scared. He contradicted earlier testimony of the crime scene expert, saying Burns had not turned Charles Green over. He contradicted testimony of officer Shaw, saying he had been co-operative when Shaw came to draw his blood. (T. 310) He agreed that he had not told his side of the story until today (T. 310), but explained on re-direct examination that he had tried. (T. 317)

Having called just this one witness, the defense rested and the State recalled Charles Burns in rebuttal. Burns denied killing Charles Green and stated that he had not been back to his house since he purchased catfish from Green in the year 2000. (T. 321) Although he had not recalled the date he was at Green's house when talking with defense counsel, when asked on cross-examination, he remembered it was 2000 because that was when "the year rolled over." (T. 322)

Burns agreed that he got married, bought a house and put in a pool table. He explained that he made \$1,500.00 a week while he wife earned between \$20.00 and \$28.00 a hour as a nurse. The State then finally rested.(T. 327-328)

The defense asked again for a directed verdict, premised in part upon *Weathersby v. State*, 147 So 481 (Miss 1933) Again, their motion was denied.

The trial judge decided the case was one of circumstantial evidence, requiring the State to amend it's instructions. The State's S-1, as modified was then given without objection. The defense's proffered instructions were denied as redundant, except for D-11, a "two-theory"

instruction.

During the state's closing arguments prosecutorial comments were made which appeared to either vouch for evidence or present the State's conclusions as facts. However, these comments were all made without objection.

The jury returned its verdict of guilty in approximately 30 minutes and McBride was sentenced to life. A timely motion for new trial or for a judgement notwithstanding the verdict was denied and McBride's appeal was timely perfected.

### **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. McBrides 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 Darrell McBride; (b) any possible violation of Mr. McBride'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; (k) any

application of the rule announced in *Weathersby v. State*, 147 So. 481 (Miss. 1933); 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. McBride that counsel finds no arguable issues in the record and that Mr. McBride has the right to file a pro se brief.

4. Counsel for Appellant request 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.

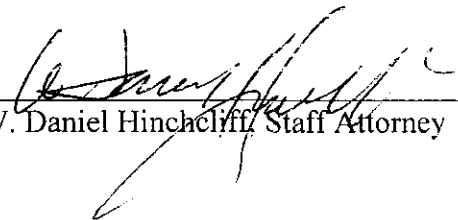
#### **CONCLUSION**

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

Respectfully submitted,

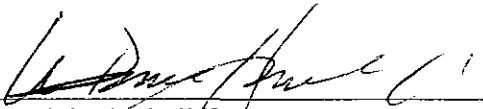
MISSISSIPPI OFFICE OF INDIGENT APPEALS  
Attorney for Darrell McBride

By:

  
W. Daniel Hinchcliff, Staff Attorney

**CERTIFICATE**

I, W. Daniel Hinchcliff, do hereby certify that on this the 11th day of May, 2009, mailed a true and correct copy of the foregoing Brief of Appellant to: Honorable C.E. Morgan III, Circuit Judge, P.O. Box 721, Kosciusko, MS 39090, Doug Evans, Esq., District Attorney, P.O. Box 1262, Grenada, MS, 38902, Darrell McBride, MDOC #101299, Mississippi State Penitentiary, P. O. Box 1057, Parchman, MS 38738, and, Charles Maris, Assistant Attorney General, P.O. Box 220, Jackson, MS 39205, all by U.S. Mail, first class postage prepaid.

  
\_\_\_\_\_  
W. Daniel Hinchcliff

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