

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

MATTHEW NASH

Appellant,

v.


STATE OF MISSISSIPPI

Appellee.

NO. 2009-KA-00538-COA

APPEAL FROM THE CIRCUIT COURT OF WARREN COUNTY, MISSISSIPPI

BRIEF OF THE APPELLANT

Clarence T. Guthrie III, (MSB-
THE GUTHRIE FIRM, PLLC
Post Office Box 597
350 Arbor Drive, Suite D
Ridgeland, Mississippi 39157-4810
Telephone: 601-991-1099
Fax: 601-206-1612
clarence@guthriefirm.com
Counsel for Appellant Matthew Nash

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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 the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. State of Mississippi
2. Matthew Nash, Appellant
3. Honorable Richard Smith, District Attorney, 9th Judicial Circuit
4. Honorable Frank Vollor, Circuit Court Judge

So certified, this the 8th day of March, 2010.




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STATEMENT OF ISSUES

None.

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Warren County, Mississippi, where Appellant Matthew Nash was convicted of murder, shooting into an occupied dwelling, and two counts of aggravated assault in a jury trial conducted on February 23-25, 2009. Mr. Nash was sentenced by the Circuit Court on March 19, 2009 to serve a sentence of life plus 50 years imprisonment. He is presently incarcerated with the Mississippi Department of Corrections.

FACTS

On the night of June 16, 2007, a dispute arose at The Biscuit Company, a night club in Vicksburg, Mississippi, wherein Anthony Trevillion struck Justin Maurice Harris, resulting in several people getting thrown out of the club by the club's security. (T. 190).

Later that evening, Appellant Matthew Nash approached Linda Miller at The Biscuit Company and asked her to show him "where Maurice stayed." (T. 244, 255, 259). Ms. Miller complied, and took Mr. Nash and others to 1224 Grammar Street in Vicksburg, Mississippi. (T. 244-246). Mr. Nash then went up on the porch, knocked on the door, and when Justin Maurice Harris answered the door, said "Hey, Maurice, we've got no problem with you." (T. 183-184). At that point Armond and Anthony Trevillion opened fire on the front porch of 1224 Grammar Street with a semiautomatic rifle, killing Justin Maurice Harris. (T. 279, 339). Mr. Nash did not have a weapon or fire any shots, but got out of the way when the firing commenced. (T. 202, 340). These events were witnessed by Claudia Hester, who lived across the street. (T. 261-9).

Matthew Nash testified in his defense, and stated that, although he was never at the club that night, he was, in fact, present at the scene of the shooting, but had no idea that Armond and Anthony Trevillion intended to use the firearms they had. (T. 328-362).

SUMMARY OF THE ARGUMENT

None.

ARGUMENT

None.

STATEMENT OF COUNSEL

1. Counsel for the Appellant hereby represents to the Court, in accordance with *Lindsey v. State*, 939 So.2d 743 (Miss. 2005), 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. Nash's behalf in good faith for appellate review, and upon conclusion, has found none.
2. The entire record and transcript were reviewed, including:
 - (a) the reason for the arrest and circumstances surrounding the arrest of Matthew Nash;
 - (b) any possible violations of Mr. Nash's right to counsel;
 - (c) the entire trial transcript and content of the record;
 - (d) all rulings of the trial court;
 - (e) possible prosecutorial misconduct objected to and/or potentially affecting the outcome of the trial, or violating a fundamental constitutional right;
 - (f) all jury instructions;

- (g) all exhibits, whether admitted into evidence or not;
- (h) possible misapplication of the law in sentencing;
- (i) the indictment and all pleadings in the record; and
- (j) any possible ineffective assistance of counsel issues ascertainable from the record.

3. Counsel further confirms that he visited Matthew Nash at the Wilkinson County Correctional Facility on March 3, 2010, where he explained the status of his appeal to Mr. Nash, and left a copy of the record and trial transcript with him. Counsel further confirms that he has, as of the date of filing this brief, mailed by first class mail, postage prepaid, a copy of this brief and correspondence informing Mr. Nash that counsel finds no arguable issues in the record and that Mr. Nash has a right to file a *pro se* brief.

4. Counsel for the Appellant requests that this Court grant Mr. Nash 40 days of additional time in which to file a *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, in his opinion, can in good faith present to this Court in this appeal. It is respectfully requested that Mr. Nash be allowed 40 days to file any *pro se* brief that he may wish to file.

Respectfully submitted, this the 8th day of March, 2010.



Clarence T. Guthrie III, (MSB) [REDACTED]
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350 Arbor Drive, Suite D
Ridgeland, Mississippi 39157-4810
Telephone: 601-991-1099
Fax: 601-206-1612
clarence@guthriefirm.com
Counsel for Appellant Matthew Nash

CERTIFICATE OF SERVICE



I, Clarence T. Guthrie III, do hereby certify that I have this day caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing **BRIEF OF THE APPELLANT** to the following:

Hon. Frank G. Vollar
Circuit Court Judge (Ret.)
1911 Mission 66, Suite G
Vicksburg, MS 39183

Hon. Richard Smith
District Attorney, 9th Judicial Circuit
P.O. Box 648
Vicksburg, MS 39181

Criminal Division
Mississippi Attorney General's Office
550 High Street, 13th Floor
Jackson, MS 39202

So certified, this the 8th day of March, 2010.


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