

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

KEITH PAUL ENGLISH

APPELLANT

V.

NO. 2009-KA-1101-COA

STATE OF MISSISSIPPI

APPELLEE

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. Keith Paul English, Appellant
3. Honorable Cono Caranna, District Attorney
4. Honorable Jerry O. Terry, Circuit Court Judge

This the 16th day of December, 2009.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY: 

Hunter N Aikens
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BRIEF OF THE APPELLANT

STATEMENT OF THE ISSUES

None

STATEMENT OF THE CASE

This case proceeds from the Circuit Court of Harrison County, Mississippi, and a judgment of conviction for carjacking entered against Keith Paul English ("English") following a jury trial on June 10, 2008, the Honorable Jerry O. Terry, Circuit Judge, presiding. (C.P. 51-53, R.E. **). The trial court ordered English to serve a term of ten (10) years in the custody of the Mississippi Department of Corrections. (C.P. 52-53, Tr. 146, R.E. **). The trial court denied English's motion for judgment notwithstanding the verdict or, in the alternative, motion for a new trial. (C.P. 108-10,

R.E. **). English is presently incarcerated and now appeals to this Honorable Court for relief.

STATEMENT OF THE FACTS

On September 17, 2006, Elize White (“White”) and her four-year-old daughter, Jada White (“Jada”), stopped at the Kangaroo Station in Gulfport, Mississippi, at about 3:00 p.m. (Tr. 56-57). White parked her car—a black Ford Mustang—right in front of the store’s entrance door(s) and exited the car to go inside and purchase a copy of the Sunday paper; White took Jada with her. (Tr. 57, 63). As White got out of the car, a man later identified as English approached her and asked her for a ride. (Tr. 58). White refused, stating that she does not give rides to strangers. (Tr. 58). She walked into the store, purchased a Sunday paper, and exited the store. (Tr. 58).

As White was walking back to her car, English again approached and asked for a ride, and White again denied his request. (Tr. 58). White opened the driver’s side door, leaned inside, and placed Jada in a booster seat located behind the passenger seat. (Tr. 59, 66-67). According to White, English kept asking for a ride, and, as she went to get into the driver’s seat, English grabbed her hand and said “well, I’m taking this car.” (Tr. 59, 66-68).

At this point a struggle ensued. (Tr. 59). White testified that English charged past her and sat in her car; however, White still had the keys to the car in her hand, so English got out of the car. (Tr. 60, 64, 68-70, 73). White testified that she then attempted to push past English to get into the car, and, as she had one foot in the car and one on the ground, English tried to pull her out of the car and grab the keys. (Tr. 60-61, 66, 69). During the struggle, White shouted “you’re not F’ing taking my car,” and she threw her keys to the front of the store, where a group of about three people were standing; one of these persons picked up the keys and took them inside. (Tr. 60-61, 63, 70-71, 87). White then pushed English aside and locked the car door to protect her daughter, and a man rushed from the store, wrestled English down, and restrained him until police arrived about a minute later.

(Tr. 60-61, 70-71, 73, 81, 94). White stood in front of her car and called 911. (Tr. 72).

Gerald Carter ("Carter"), and Christina Ross ("Ross"), employees of the Kangaroo Station, were both working on the day of the incident. (Tr. 77-79). Carter testified that, prior to White's arrival, English came up to the store with three other persons. (Tr. 86). Carter was standing outside the store near a garbage can to the left of the front door(s) smoking a cigarette when White pulled up and parked in front of the store, about ten (10) or twelve (12) feet from him. (Tr. 78-79, 84). Carter testified that White went inside the store, came back out, and was putting her daughter in the back seat when English (who Carter identified in court) approached her and asked for a ride. (Tr. 79-80). Carter testified that the three guys English came to the store with then walked over and said, "Let's go," and English told them, "No, it's my car and I'm getting it." (Tr. 86-88).

Carter recalled that "[English] was trying to get her out and take the - - and get the car, and she took the keys out somehow or another. They was [sic] wrestling around, and she got the keys out and she threw them upside the building." (Tr. 79). Carter testified that he then went inside the store and told the cashier to call 911, and "this black man went out there, and he went around and came up behind [English] and got [him] in a choke hold and held him down until the police got there." (Tr. 80).

Christina Ross ("Ross") was working the cash register at the Kangaroo Station at the time of the incident. (Tr. 90). Ross saw White park her car and saw English approach her. (Tr. 92). She recalled White and Jada come in the store, buy a newspaper, and walk outside. (Tr. 92-93). Ross also recalled the altercation, which she described as follows:

The defendant went towards her and her daughter while she was getting her in the car. He was trying to get her keys from her, or whatever, while she was trying to get in the car. But she had already put her little girl in the car and they was tussling outside the car.

...

He was trying to get her keys, and she was trying to fight him off and - - from get - - from him not getting into the car, or whatever. And all I know her back got turned and she threw the keys towards our front door.

(Tr. 93).

Ross also testified that a customer she was taking care of at the time ran outside and restrained English until police arrived. (Tr. 94). Ross took the keys, got Jada, brought her inside the store, and put her in an office. (Tr. 95).

Officer Jeffrey Clark ("Officer Clark") of the Gulfport Police Department arrived at the scene first; he was less than one block away from the Kangaroo Station when he was dispatched. (Tr. 102-03). Upon his arrival, Carter directed him to English, who was restrained on the ground. (Tr. 103).

At trial, English took the stand in his own defense. (Tr. 109). He testified that, at the time of the incident, he was self-employed in the air-conditioning and heating repair business, and he owned several vehicles, one of which was a black Ford Mustang. (Tr. 111-12). English also explained that he and his wife had just gone through a bad divorce, he had turned to drugs, and he was extremely high on cocaine at the time of the incident. (Tr. 112, 116-17). English testified that, in his state of mind that day, he thought White's black Ford Mustang was his black Ford Mustang. (Tr. 112-16). He testified that the people that were at the store with him tried to tell him that White's car wasn't his, and they told him, "Let's go." (Tr. 113, 116). English testified that he never put his hands on White, he never got in her vehicle, and he never intended to steal, take, or appropriate White's car. (Tr. 115, 118).

The jury returned a verdict of guilty of carjacking. (C.P. 51-53, Tr. 144, R.E. **). The trial court ordered English to serve a term of ten (10) years in the custody of the Mississippi Department of Corrections. (C.P. 52-53, Tr. 146, R.E. **).

SUMMARY OF THE ARGUMENT

None

ARGUMENT

None

STATEMENT OF COUNSEL

1. The undersigned counsel for the Appellant hereby represents to the Court pursuant to *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, in good faith, be presented to the court on English's behalf for appellate review, and upon conclusion, has found none.

2. The entire record and transcript(s) were reviewed and matters considered in counsel's search included were:

(a) the reason for English's arrest and the surrounding circumstances; (b) any possible violations of English's right to counsel including ineffective assistance of counsel; (c) the entire trial transcript and content of the record, including voir dire and opening and closing arguments; (d) all rulings of the trial court; (e) any possible prosecutorial misconduct; (f) all jury instructions; (g) the admission of all exhibits; (h) possible misapplication of the law in sentencing; and (i) the indictment and all of the pleadings in the record; and (j) any possible ineffective assistance of counsel issues. (k) any potential discovery violations; (l) whether the verdict was against the overwhelming weight of the evidence or was supported by insufficient evidence; and (m) English's mental state insofar as it applies to both his competency to stand trial as well as culpability due to diminished capacity.

3. 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 English that counsel finds no arguable issues in the record and that English has a right to file a *pro se* brief.

4. Counsel for appellant requests that the Court grant English forty (40) days of additional time in which to file a *pro se* brief if he desires to do so.

5. Counsel stands ready and willing to prepare supplemental memoranda of law on any issues this Court may request.

CONCLUSION

There are no issues that counsel can, in good faith, present to this Court in this appeal, and counsel requests forty (40) days of additional time to allow English to prepare and file a *pro se* brief, should he so desire.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:



Hunter N Aikens

COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I, Hunter N Aikens, Counsel for Keith Paul English, 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:

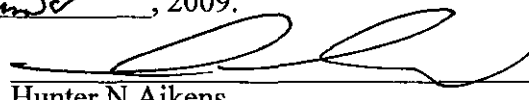
Honorable Jerry O. Terry
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This the 16th day of December, 2009.



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