

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

TERRANCE KUYKENDALL

APPELLANT

V.

NO. 2009-KA-1740-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF THE APPELLANT

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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.

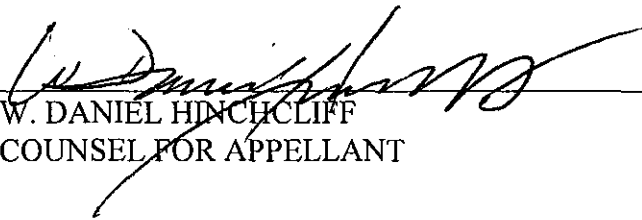
1. State of Mississippi
2. Terrance Kuykendall, Appellant
3. Honorable Laurence Y. Mellen, District Attorney
4. Honorable Kenneth L. Thomas, Circuit Court Judge

This the 3rd day of March, 2010.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:


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BRIEF OF THE APPELLANT

STATEMENT OF THE ISSUES

ISSUE NO. 1 : WHETHER THE TRIAL COURT ERRED IN REFUSING THE DEFENSE MOTION FOR A PSYCHIATRIC EVALUATION OF APPELLANT TERRANCE KUYKENDALL.

ISSUE NO. 2 : WHETHER THE TRIAL COURT ERRED IN FAILING TO GRANT APPELLANT TERRANCE KUYKENDALL'S MOTION FOR A DIRECTED VERDICT WHERE KUYKENDALL'S WAS THE ONLY WITNESS TO THE EVENTS OF THE DEATH OF TRACY SMITH AND HIS TESTIMONY OF THE EVENTS WAS NOT SUBSTANTIALLY CONTRADICTED BY OTHER EVIDENCE.

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Quitman County, Mississippi, and a judgement of guilty against Terrance Kuykendall for the crime of murder and the ensuing sentence of life without parol, following a jury trial commence on September 15, 2009, Honorable Kenneth L. Thomas, Circuit Judge, presiding. Terrance Kuykendall is currently incarcerated in an institution under the supervision of the Mississippi Department of Corrections.

FACTS

_____ Prior to trial counsel for Terrance Kukendall, ["Kuykendall"], brought on a motion for mental examination urging that Kuykendall was unable to appreciate the charges against him and assist in

the preparation and execution of his defense. Counsel asserted that after his appointment as attorney and the subsequent meeting with his client, that it was counsel's belief that Kuykendall was not competent to stand trial "or even have an understanding of the proceedings]..." (T. 2) Counsel further averred that Kuykendall believed everyone was plotting against him and that he heard voices (T. 3) He also believed that he was to be represented by Johnny Cochran. This motion for a mental evaluation was the second filed in this cause, the prior motion having been file by Kuykendall's previous attorney at his previous trial.¹

Contrary to his attorney's beliefs, Kuykendall denied he was not competent. Instead, he offered the following response to the trial judge's inquiry as to his "mental alertness" and "mental stability." (T. 5)

BY MR. KUYKENDALL: I don't even know how this came about. You know, I came to psychiatric treatment once before and I pleaded not guilty and they just brought me (sic) to me but they never came to me with it. (T. 5-6)

Kuykendall told the court he did not need any examination and his mother, Shirley Kuykendall, concurred. She told the court that her son was "bright, intelligent, [and] nice." (T. 7) She explained that they were going to hire the Cochran Firm in Jackson. She added that if anyone was hearing voices, it was "his attorney." (T. 8) Her denial of her son's mental state and antipathy to his attorney continued, as she complained that his attorney was "automatically against him." (T. 9) Kuykendall's mother's hostility to the suggestion that her son was less than competent was sharply contrasted by the statement's of his aunt Erma Kuykendall at the sentencing hearing.

She told the court that her nephew "lost touch with reality a long time ago." It was her opinion that

¹The first trial apparently resulted in a mistrial upon the jury being unable to reach a unanimous verdict.

this loss of touch with reality had influenced the decisions made by Kuykendall at trial (T. 504-505)

His mother was not present at sentencing.

The State complained that Kuykendall had already gone to trial once, and been able to participate in the matter. Further any mental examination would delay the case and cost the County money, the District Attorney argued. The trial judge questioned Kuykendall and found that Kuykendall had an understanding of the charge against him, the ability to confer with his attorney, an appreciation of the charges against him and found Kuykendall competent to stand trial. (T. 23-24)

The State's opening statement lit upon the most critical underlying theme of this case, that the life story of the deceased, Tracy Smith, ["Tracy"], was a poignant story, a story of a sad, lonely and emotionally damaged woman. The State told the jury that Tracy was "large woman" who had suffered "rough times." (T. 38) She "clung" to Kuykendall, perhaps because "[s]he had lost her family in a fire." However, Kuykendall, whom she had pursued, wanted out of their relationship, and she "begged" him to stay (T. 39) It was the State's theory that Kuykendall shot her in the head, because her begging him to stay made Kuykendall angry. The defense theory was that Tracy committed suicide. (T. 46)

Tracy's aunt, Earnestine Smith, was the State's first witness. She told the courtroom that Tracy's mother had died in a house fire, along with Tracy's first-born child. Because of this Tracy received "remuneration" of about four thousand dollars a month. (T. 51) The same year as the fire, she got together with Kuykendall. They then began to move from place to place. Tracy and Kuykendall had just returned from Texas², when Tracy contacted Earnestine Smith to see if she and

² Kuykendall had moved them to Texas to get away from people he believed were trying to poison them and tamper with their furnace.

her son Jalen could stay with her. Earnestine agreed to take in Tracy and Jalen, but not Kuykendall. This phone call was apparently preceded by a phone call the day before, where she overheard Kuykendall telling some unidentified person that they had "to die today." (T. 56-57) This testimony was admitted without objection. When Kuykendall then began to speak with her, he told her, "sister, you need to leave your house for - - for a few hours today." She asked why and he told her to not ask, that he couldn't tell her then. (T. 57)

That day, Tracy came to her house with Kuykendall. Kuykendall was asked to leave by Earnestine and he did. She then went to sleep. When she awoke Tracy was gone. Later that day she received a telephone call that Tracy died of a gun shot wound.

Cross examination cleared up any mystery of who Kuykendall was talking to when he said you have to die today, it was Tracy. (T. 60-61) Testimony somewhat more helpful to the defense, cross also revealed that Tracy had not received any counseling after the death of her mother and son in a house fire. (T. 64)

Rodrick Mabry, the Assistant Chief of Police in Marks responded to a shooting call. He arrived to find two para-medics on the porch and Tracy inside, dead of a bullet wound to her head. (T. 68-69) No weapon was found. Mabry began looking for Kuykendall because he had been dating Tracy. He found Kuykendall coming towards Marks, in a car with his aunt. "He turned himself (sic) into me" said Mabry.

As Kuykendall was being transported Mabry reported that Kuykendall blurted out: "I fucked up. I fucked up. I killed her. I just wasn't thinkin'." Kuykendall asked him to "pull off - - pull off side the road and just shoot him." (T. 82)

The defense elicited that Mabry had observed no blood on Kuykendall when he was arrested. Mabry was asked to repeat exactly what Kuykendall had said. Again, it was not that Kuykendall shot

Tracy, but that he “killed her.” (T. 105)

Cora Lee Diggs is Kuykendall’s grandmother. It was at her house that Tracy was found with a fatal gunshot wound to her head. (T. 122) Cora Lee was in her bedroom at the time of the shot and did not witness the event. (T. 127-128)

Dorothy Kuykendall lived with Cora Lee on and off and was present the day Tracy died. Terrance Kuykendall was her nephew. Kuykendall called her that morning for a ride to Cora Lee’s house. Tracy and Terrance went into a bedroom. At some point later in time she heard a “pow.” (T. 163-164) She went to the hallway and saw Terrance Kuykendall, but not in the bedroom. She peeked in the bed room and saw Tracy with the head wound. Terrance then walked out the back door. She did not see a gun. She told defense counsel that Terrance was in the kitchen when she went to investigate the shot she heard, and affirmed she did not see Terrance with a gun when he left. (T. 170, 183)

Keon Hughery was Terrance Kuykendall’s best friend. (T. 188) That afternoon, Kuykendall came to his house, appearing “disoriented.” (T. 191) Terrance Kuykendall told his friend, that he “felt like he had killed her (Tracy)” and talked about the couple breaking up. Hughery explained that his friend was saying that Tracy killed herself, and that it wasn’t like Kuykendall had done it, but that they had broken up. (T. 195) Hughery didn’t want the police coming to his house and asked Kuykendall to leave. (T. 195) The prosecution referred Hughery back to his statement to the police on several occasions, pointing out that Hughery used the words “I killed her” in his statement. (T. 194-197) Hughery had not seen a weapon. (T. 201) Hughery told defense counsel the police report was in some respects inaccurate and missing parts. (T. 201-202) Hughery said that Kuykendall’s actual statement to him was “I fucked up. I felt like I killed her.” Kuykendall told him that the couple had broken up and that Tracy then shot herself. Kuykendall felt responsible for Tracy’s

suicide. (T. 203)

Shamika Smith was Terrance Kuykendall's first cousin. (T. 216) On the date of Tracy's death, she was with her mother in the car when Terrance flagged them down and asked for a ride to his aunt's home in Sledge (T. 216-219) On the way to Sledge she received a text message telling her Tracy "was shot." and the rumor was that Terrance was responsible. (T. 220) ³ When they arrived in Sledge, the aunt drove up. She told Terrance to get in with her, that he needed to turn himself in to the police. Terrance readily complied. (T. 221) The aunt then drove Terrance Kuykendall towards Marks, with Shamika and her mother following. (T. 222)

An M.B.I. investigator testified that she took the photographs of the scene and placed bags on Tracy's hands to preserve evidence. She also recovered a 9mm. Hull from the scene.

Terrance Paul Smith was Tracy's cousin. He recounted that on the Saturday before Tracy's death, Terrance Kuykendall made several statement's to him. He testified:

A. Just when they came from Texas, he was talkin about, you know, look - - incidents they was havin' up there. And he was tellin' me that it was just A - - this Arab kingpin that offered him so many kilos that - - but the only way that he can get those and get in they game was if he killed Tracy. (T. 249)

A. Well, started off he was - - like he was havin' dreams about the house fire that my family died in before, you know. So he was havin dreams about that. And Tracy's mother, my auntie Vanessa, was comin' back and sayin' that she was murdered.

And he was talkin' about her husband and my auntie, that they may have done it, and that Tracy had a part in it. And that kept comin' back to him every night in a dream. And, you know, he was like, you know, he got tired of it and that he was gonna kill her. (T. 251)

Later Terrance Paul Smith explained that the "Arab" had said to Terrance Kuykedall that he must kill

³No objection was made to this hearsay within hearsay.

Tracy to get into the “organization.” (T. 253)

Smith also disclosed that he found some 9mm rounds in Tracy’s vehicle while getting Kuykendall’s things out. He also found a pawn sales receipt for a 9 mm. Hi-Point pistol, later shown to have been purchased by Kuykendall. (T. 256, 268-271) There were also some shotguns shells. The defense elicited that Smith had not bothered to tell anyone about Kuykendall’s alleged and bizarre threats. (T. 258-259) Smith also described two suicide attempts by Tracy prior to her death. (T. 265-266) He also told the jury that Tracy was right handed.

At the next break in the proceedings the defense renewed it’s motion that defendant be given a psychiatric evaluation. The State’s witness Terrance Paul Smith’s testimony having born out what counsel had argued in the earlier motion for mental examination. When asked by the court to evaluate himself, Kuykendall responded “I’m feeling pretty good, Judge. Pretty good. (T. 299)

Expert testimony revealed the spent hull to be a 9 mm. cartridge, probably fired from a Hi-Point pistol. (T. 301-308) No gun shot residue was found on Tracy’s hands. (T. 314-322) Tracy’s fatal wound, was a near contact gunshot which entered the left side of her forehead and partially exited by her ear. The State then rested.

During the recess, the defense made it’s motion for a directed verdict. The Court made the appropriate *Culverson* advisement. The court also ruled against defendant upon a motion in limine by the State to exclude Kuykendall’s utterance to his aunt occurring shortly after the event that Tracy had shot herself. The trial court agreed with the State that such a statement was self-serving hearsay.⁴ (T. 358)

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The defense appeared to concede the point, even though such evidence would have been admissible under MRE 801 (d)(1) to rebut the implication that Kuykendall had recently fabricated the defense of suicide.

Terrance Kuykendall took the stand in his own defense, after testimony from his aunt that she had driven him towards Marks to turn himself in. (T. 359-365) Kuykendall was “skeptical” about entering a relationship with Tracy, but she had be she “kept comin’ at” him and she prevailed. Within a few months of moving in together, Kuykendal was convinced that the couple needed to move. He believed “someone had been tryin’ to kill us” by several methods. He believed that the couples food was being poisoned.

It started off where, you know, somebody had started puttin’ poison, or whatever, you know, in our food, or whatever, and you know, we had went to the hospital, or whatever. And we had went to the hospital, or whatever.

And then, you know, the situation got worser, you know what I am sayin’, and worser and worser. This is one of the situations why we had decided why we wanted to leave town.

So the next situation was that somebody tampered with the gas heater, or whatever, when we was at the house, or whatever. (T. 309)

So they moved to Killeen, Texas.

Kuykendall’s narrative, though somewhat difficult to follow, arrived at a point where he thought the couple should break up.

Kuykendall told the jury of an occurrence with Tracy that had really “upset” him, when Tracy had put a shotgun under her chin. Tracy said to him:

“You ain’t gonna be with me? You gonna do this to me ? (T. 375)

Kuykendall coaxed her in to giving him the shotgun and as she handed him the gun, she wrecked the car. He was asked if the police had responded to the wreck and his answer was ; “Yeah, I believe GEICO wrote it up.” (T. 375) After this they went to Texas.

When they returned from Texas, they lived in a house without heat or electricity.

Kuykendal was again advising Tracy that he wanted out on the weekend of her death. They were at

his grandmother's house and he again said he wanted out. He described a despondent Tracy, who had no one else to be with and no place to go. (T. 378-379) Tracy picked up his gun and went for a walk. He found her, brought her back and hid the gun behind the television. (T. 380) They continued the emotional discussion and Tracy retrieved the pistol. He left the bedroom to go to the bathroom, and was gone for fifteen minutes when he heard a shot. (T. 380-382) immediately after the shot he heard foot steps, running towards the back door. (T. 382) As he came out of the bath, his aunt asked if he had heard the shot. Kuykendall then entered the bedroom and saw that Tracy had been shot. He began to cry. (T. 382-383) In a state of shock, he left and went to his friend Keon's house. He told Keon Tracy was dead, that she shot herself. (T. 384) He then went to his aunt's house.

Terrance Kuykendall recalled Tracy once before having attempted suicide. They had broken up and Tracy cut her wrists. He testified that Assistant Chief Mabrey, who he called "Mayberry" had taken the report. Assistant Chief Mabrey was not called to rebut this. He denied making statements to Terrance Smith about an Arab organization or needing to kill Tracy. (T. 391) He averred that his statement's to Keon Hughery were about Tracy killing herself. (T. 393)

On cross examination, Kuykendall could not say who was trying to poison him. He did not know who was trying to "blow [him] up." (T. 394) He rebutted the State's interpretation of the Arab organization urging him to kill Tracy for insurance money (T. 396) The State inquired if Kuykendall remembered Dr. Hayne's testimony where he didn't substantiate Tracy cutting her wrists. (T. 409) The defense objected, recalling that Dr. Hayne had testified to "non-surgical" scars on her arms and forearms. (T. 347, 409) Kuykendall was utilized (without objection) by the State to introduce a photograph of the shotgun. Kuykendall also refuted some of Shamika Smith's testimony, saying he had informed her and his aunt Dorothy that Tracy shot herself.

The case was submitted to the jury who returned a verdict of guilty. The jury was not presented with the possibility of finding Kuykendall not guilty by reason of insanity.

SUMMARY OF THE ARGUMENT

Two different lawyers representing Kuykendall had unsuccessfully requested mental examinations of him. One such motion was renewed in trial after testimony of his bizarre beliefs was introduced by the State. This record supports the necessity of a psychiatric examination of Kuykendall to determine his ability to rationally participate in his defense.

Kuykendall was the only witness to all the events leading up to Tracy Smith's death. Although he denied being present at the exact moment she shot herself, this situation none-the less presents a imperfect Weathersby Rule scenario.

ARGUMENT

ISSUE NO. 1 : WHETHER THE TRIAL COURT ERRED IN REFUSING THE DEFENSE MOTION FOR A PSYCHIATRIC EVALUATION OF APPELLANT TERRANCE KUYKENDAL

This record began with a motion brought on by Terrance Kuykendall's attorney to have a psychiatric evaluation performed. The motion was supported by statement's of his counsel that it was his opinion after meeting with Terrance Kuykendall and talking with him, Kuykendall was unable to assist in his own defense. Counsel cited specific instances, such as his client hears voices, his client believed that Johnny Cochran was his attorney. He believed "everybody was plotting against him." (T. 3) Prior to his present counsel, Terrance Kuykendall had been represented by another attorney, who had also requested a mental examination of Kuykendall. (T. 4) The court, during it's hearing on the motion, vouched for counsel as an attorney of good reputation and not given to frivolous motions, nor making misrepresentations to the court. (T. 8-9, 19-21, 24) The trial judge also questioned Terrance Kuykendall, his mother and his jailers. His mother was apparently offended

at the notion that her son might be incompetent and accused his attorney of being the person hearing voices. (T. 8) It was an unusual display of stubborn family pride when you consider that her son was on trial for murder. The trial court ruled Kuykendall competent, without ordering any evaluation. As will be shown, this ruling may have been premature and premised on some errant conclusions. Kuykendall's conduct during the trial was at times supportive of his attorney's concern.

Certainly, the trial court has an ongoing duty during the course of a trial to ensure that the defendant is competent. "[T]he trial judge has an ongoing responsibility to prevent the trial of an accused unable to assist in his own defense." *Conner v. State*, 632 So. 2d 1239, 1248 (Miss. 1993) This principle is embodied in URCCC 9.06 which instructs the trial court to order an evaluation , even during trial, where there exists reasonable grounds to believe the defendant may not be competent. In this matter, the trial courts decision was based on the testimony of the defendant, his mother and his jailers (who testified to little real opportunity to observe). The informed opinion of two different and capable members of the bar had to be ignored. However, all the pretrial considerations should have been trumped. Certainly, the testimony of Kuykendall concerning unknown assailants trying to poison him and tamper with his heating should be indicative of mental illness. His dreams and the bizarre comments on Arabs and their organizations, instructing him to kill Tracy should have raised some eyebrows. And certainly, no rational person, with understanding of the effects of their words and deeds, would tell Tracy's brother that arabs were instructing him to kill Tracy. Perhaps most telling on the issue of whether Kuykendall was in touch with reality was his response to the trial court's inquiry as to his self evaluation of sanity, made after testimony condemning him of murder, where he replied "I'm feeling pretty good judge." (T. 299) Thus any real examination of the basis for a mental exam should find there existed a reasonable basis or grounds to order such an exam. *Howard v. State*, 701 so. 2d 274, 280-281 (Miss. 1997)

The trial court had already acknowledged that Kuykendall's attorney was not give asking for mental exams frivolously. The record indicated Kuykendall's first attorney was of the same opinion. The trial judge was errant in not affording greater weight to these attorney's opinions. Not only are they in the best position to weigh the defendant's ability to sanely participate in their defense, but it is established precedent that an attorney's opinion be afforded significant weight. *Howard v. State*, 701 So. 2d 274, 281 (Miss. 1997) , over-ruled for other reasons. If an attorney is concerned about his client, and that client exhibits irrational behavior, it is trenchant that there should thereupon exist reasonable grounds to order a mental examination. Only, upon completion of that examination by a competent psychiatrist should the trial court be deemed to have adequate information to conduct a hearing and rule on competency.

Rule 9.06 of the Uniform Rules of Circuit and County Court Practice provides that:

If before or during trial the court, of its own motion or upon motion of an attorney, has reasonable ground to believe that the defendant is incompetent to stand trial, the court shall order the defendant to submit to a mental examination by some competent psychiatrist selected by the court in accordance with § 99-13-11 of the Mississippi Code Annotated of 1972.

After the examination the court shall conduct a hearing to determine if the defendant is competent to stand trial.

Hearn v. State, 3 So.3d 722, 728 (Miss. 2008) Thus, the court having a reasonable basis to order an exam should have done so. More so, the grounds to order the exam do not have to rise to a certain level of merit. "[A] circuit court may order a mental evaluation of the defendant even without a reasonable ground to believe the defendant is incompetent. The issue of the defendant's mental condition need only be in question to enable the court to order an evaluation." *Magee v. State*, 914 So.2d 729, 737 (Miss. App.2005)

Kuykendall was on trial for murder therefore, the determination of his competency should have been afforded greater consideration. The final test of competency requires that the ability to assist in trial is weighed on a sliding scale based on the severity of the charge.

This Court has held that the test for competency to stand trial mandates that a defendant is one:

(1) who is able to perceive and understand the nature of the proceedings; (2) who is able to rationally communicate with his attorney about the case; (3) who is able to recall relevant facts; (4) who is able to testify in his own defense if appropriate; and (5) whose ability to satisfy the foregoing criteria is commensurate with the severity of the case.

Martin v. State, 871 So.2d 693, 697 (Miss. 2004)

By failing to order a mental evaluation, the trial court deprived itself of a valuable tool, the opinion of a professional. But more so, it deprived Kuykendall of a fundamentally fair trial guaranteed under the 6th Amendment.⁵ While the trial court did conduct a competency hearing, it failed to order a mental evaluation, and in that it committed reversible error.

ISSUE NO. 2 : WHETHER THE TRIAL COURT ERRED IN FAILING TO GRANT APPELLANT TERRANCE KUYKENDALL'S MOTION FOR A DIRECTED VERDICT WHERE KUYKENDALL'S WAS THE ONLY WITNESS TO THE EVENTS OF THE DEATH OF TRACY SMITH AND HIS TESTIMONY OF THE EVENTS WAS NOT SUBSTANTIALLY CONTRADICTED BY OTHER EVIDENCE.

Kuykendall moved for a directed verdict at the close of the State's case and again upon the conclusion of the trial. The court found the evidence sufficient to submit the case to the jury.

However, the only witness to the death of Tracy Smith was the defendant, Terrance Kuykendall. As his version of the events was reasonable and not substantially contradicted in material particulars, Kuykendall's motion should have been granted. *Weathersby v. State*, 165 Miss. 207, 147 So. 481

⁵U.S. Const. Amend VI

(1933). This long held legal doctrine has been recently affirmed in *Johnson v. State*, 987 So. 2d 420 (Miss. 2008) where the court affirmed that where the defendant and his witnesses, if any are the sole eyewitnesses to the homicide, the defense version must be accepted “unless substantially contradicted in material particulars by a credible witness...or by the physical facts...” *Weathersby*, *Id.* at 482. If such be the case, the State’s evidence cannot as a matter of law be said to be sufficient to sustain the verdict.

Kuykendall was the last eyewitness to the events, but he left the room immediately prior to Tracy’s self inflicted gunshot. As he was the last eyewitness and heard the events that further transpired, Kuykendall urges that the *Weathersby Rule*, would logically extend to his situation. Witnesses are limited to testifying to facts within their personal knowledge, however, that knowledge is not limited to what they have seen, but also to what they have heard. MCR 602

Evidence in this case showed Tracy to be emotionally distressed, Kuykendall was seeking to end their relationship. One of the State’s own witnesses said that Kuykendall had told him Tracy shot herself. That she was despondent over the impending breakup. That Kuykendall felt responsible for her death, that in saying “I killed her” he was referring to his ending the relationship.

Kuykendall did not run, but went to a neighboring house, the home of his best friend. When he left there, he went to his aunt for counsel. She told him to turn himself in, and he did these things were not consistent with murder, but consistent with someone who was distraught over a suicide he believed he had precipitated.

While the missing weapon and the lack of gunshot residue on Tracy’s hands could be argued to be facts which would contradict the version of events offered by Kuykendall, evidence showed the scene was not secured for some time and therefore could have been altered. Mabrey admits he was delayed (T. 92) and the paramedics had been in the room well before the police arrived (T. 167)

A fact equally curious was that no one saw Kuykendall with the gun either, even as he was observed leaving. The whereabouts of the gun is an enigma to either theory of the case.

Nothing in the State's case can be said to effectively rebut Kuykendall's version of the events. Thus, though he did not witness the fatal shot visually, Kuykendall was indeed the only witness to the tragic event and is therefore, by logical extension of the *Weathersby Rule*, entitled to have his version of the events accepted.

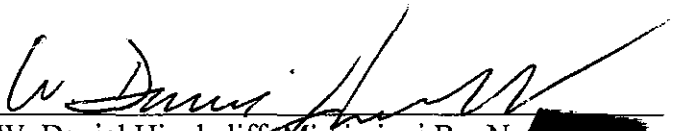
CONCLUSION

Appellant Kuykendall respectfully submits that premised upon the foregoing arguments that the judgement of murder entered in the lower court be reversed and rendered, or in the alternative, that this cause be reversed and remanded for a new trial.

Respectfully submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:


W. Daniel Hinchcliff, Mississippi Bar No. [REDACTED]
Staff Attorney

CERTIFICATE OF SERVICE

I, W. Daniel Hinchcliff, Counsel for Terrance Kuykendall, 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 Kenneth L. Thomas
Circuit Court Judge
Post Office Box 787
Cleveland, MS 38732

Honorable Laurence Y. Mellen
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