

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

DARRELL WALTER

APPELLANT

VS.

NO. 2019-KA-0682-SCT

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

LYNN FITCH, ATTORNEY GENERAL

**BY: SCOTT STUART
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. 8007**

**OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680**

TABLE OF CONTENTS

Table of Contents..... i

Table of Authorities ii

Statement of the Case..... 1

Statement of the Facts. 2

Summary of the Argument..... 3

Argument. 4

Statement of Counsel..... 4

Conclusion. 7

Certificate of Service..... 8

TABLE OF AUTHORITIES

Mississippi State Court Cases:

Lindsey v. State, 939 So.2d 743 (Miss.2005)..... 4, 5, 6

STATEMENT OF THE CASE

This is a direct appeal from a judgement of conviction for capital murder during a robbery with a firearm enhancement and aggravated assault with a firearm enhancement. Darrell Walter appeals his convictions from the Circuit Court of Quitman County, Mississippi, Honorable Linda Coleman, Circuit Court Judge, presiding.

COURSE AND DISPOSITION OF THE CASE IN THE CIRCUIT COURT

The grand jury returned an indictment charging Darrell Walter in Count I with murdering Kelvin Blackburn during the commission of a robbery. The indictment also charged Walter with committing the crime against Blackburn with displaying a firearm while committing the crime. The indictment charged Darrell Walter in Count II with committing aggravated assault by causing Jason Roberson bodily injury with a deadly weapon, a firearm. The indictment also charged Walter with committing the crime against Roberson with displaying a firearm at the time he committed the crime. C.P. 5-6.

The circuit court tried Darrell Walter before a jury. The jury returned verdicts of guilty of capital murder with a firearm enhancement in Count I and guilty of aggravated assault with a firearm enhancement in Count II. C.P. 31.

Darrell Walter filed a NOTICE OF APPEAL (AMENDED) on April 15, 2019. C.P. 45.

The circuit court entered an order denying Walter's motion for JNOV or new trial on May 10, 2019. C.P. 54.

STATEMENT OF THE FACTS

On the night of August 6, 2017 several men were gambling at Jack's Place in Lambert, Quitman County, Mississippi. They were shooting dice. One of the men was Kelvin Blackburn, also known as "Big Man". Tr. 353-357.

Kelvin Blackburn had won approximately \$3,000.00 that night. Tr. 208.

Two men came into the room where Blackburn and the others were shooting dice. One had a tattoo, and the other had a beard and a low cut. Tr. 359-360.

The man with the low cut was Darrell Walter, the defendant. Tr. 213.

The two men were walking around the room. The man with the beard went into the bathroom. When he came out from the bathroom, he put a pistol to Blackburn's head, and said, "You know what this is." Tr. 209, 211, 361.

Blackburn responded, "Nah, cuzz." Blackburn stood up and grabbed at the hand holding the gun. They tussled over the gun. The gun went off. Tr. 211, 361-362.

The other man with the tattoo then pulled out a gun. Tr. 362-363.

Kelvin Blackburn and Darrell Walter, the man with the beard, hit the floor. Tr. 365.

Kelvin Blackburn counted his money and put it into his shirt pocket. Tr. 219.

After shooting Blackburn, the man with the beard stood over Blackburn and reached into Blackburn's pocket. He shot Blackburn in the head multiple times. Tr. 367, 370.

Kelvin Blackburn died as the result of multiple gunshot wounds. The medical examiner found that the cause of Kelvin Blackburn's death was homicide. Tr. 316.

Several of the gunshot trajectories were consistent with someone being on the ground when they were shot. Tr. 319.

SUMMARY OF THE ARGUMENT

Darrell Walter does not make a summary of the argument. No response is required.

ARGUMENT

Counsel for Darrell Walter, Appellant on appeal and defendant in the circuit court, states that he has examined the record and finds no arguable issue. Therefore, he makes no argument that the trial court committed reversible error. Walter's brief is what is presently referred to as a "Lindsey Brief".

I.

Appellant's counsel asserts in the brief of the Appellant that he has scoured the record and determined that there is no arguable issue to raise on this appeal. He asserts the following:

STATEMENT OF COUNSEL

1. I, W. Daniel Hinchcliff, 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 Darrell Walter'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 Darrell Walter; (b) any possible violation of Darrell Walter's right to counsel; (c) the entire trial transcript; (d) all rulings of the trial court; (e) possible prosecutorial misconduct; (f) all jury instructions including the right to an instruction on Defendant's theory of the case; (g) all exhibits, whether admitted into evidence or not; (h) possible misapplication of the law in sentencing; (I) the indictment and all the pleadings in the record; (j) any possible ineffective assistance of counsel issues; (k) any speedy trial issues; (l) any 14th Amendment Due Process issues; and (m) evidence of other bad acts, 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 Darrell Walter that counsel finds no arguable issues in the record and that Appellant has the right to file a pro se brief.

4. Counsel for Appellant request that this Court grant Darrell Walter an additional forty (40) days of 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.

II.

A concern of the Mississippi Supreme Court in *Lindsey v. State*, 939 So.2d 743 (Miss.2005), was whether appellants were being denied their right to counsel on the appellate level.

The court in *Lindsey* implemented a procedure for cases where appellate counsel represented an indigent defendant and found no arguable issues on appeal. Counsel was instructed to file a brief and a summary of the case's procedural and factual history, citing the record, ensuring that a trained legal eye had searched the record for arguable issues and evaluated the case.

The court instructed that the brief had to certify that there were no arguable issues supporting the appeal. Counsel also had to certify that he or she reached the conclusion after scouring the record thoroughly and specifically examining (a) the reason for the arrest and circumstances surrounding it, (b) possible violations of the client's right to counsel, (c) entire trial transcript, (d) rulings of the trial court, (e) possible prosecutorial misconduct, (f) all jury instructions, (g) all exhibits, whether admitted into evidence or not, (h) possible misapplication of the law in sentencing.

Counsel then had to send a copy of the brief to the defendant and inform them that he or she could find no arguable issues in the record. Counsel should advise the client that he or she had the

right to file a *pro se* brief.

If the defendant raised any arguable issue or if the appellate court discovered any arguable issue, the court must require appellate counsel to submit supplemental briefing, regardless of the probability of defendant's success on appeal.

After briefing is complete the court should consider the case on its merits and render a decision. *Lindsey, Id.*, ¶ 18.

The purpose of the procedure was to safeguard the constitutional right to counsel afforded to indigent criminal defendants throughout the entirety of the appellate proceedings.. *Lindsey, Id.*, ¶ 20..

III.

The Appellant's Brief supports a finding that Darrell Walter's constitutional right to counsel on appeal was not denied. Walter's counsel scoured the record and found no arguable issues for appeal.

The state agrees with the counsel for the Appellant. The state is prepared submit briefs if the court finds it necessary based upon issues raised by Darrell Walter, if any are raised. Additionally, if the court on its own desires briefing on any issues it finds, the state is prepared to submit briefs.

IV.

As of today, March 4, 2020, Darrell Walter has not filed a *pro se* brief. The briefing schedule has been reissued, and the Brief of the Appellee is due Mach 30, 2020.

CONCLUSION

The State of Mississippi asks the court to affirm the judgment of conviction of the Circuit Court of Quitman County, Mississippi.

Respectfully submitted,

LYNN FITCH, ATTORNEY GENERAL

BY: s/ Scott Stuart
SCOTT STUART
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. 8007

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing pleading or other paper with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

W. Daniel Hinchcliff
Office of State Public Defender
Indigent Appeals Division
P.O. Box 3510
Jackson, MS 39207

Further, I hereby certify that I have mailed by United States Postal Service the document to the following non-MEC participants:

Honorable Linda F. Coleman
Circuit Court Judge
P.O. Box 548
Cleveland, MS 38732

Honorable Brenda Mitchell
District Attorney
P.O. Box 848
Cleveland, MS 38732

This the 4th day of March, 2020.

s/Scott Stuart
SCOTT STUART
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
Post Office Box 220
Jackson, Mississippi 39205-0220
Telephone: (601) 359-3680