

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

DARRELL WALTER

APPELLANT

V.

NO. 2019-KA-00682-SCT

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. Darrell Walter, Appellant
3. Honorable Brenda F. Mitchell, District Attorney
4. Honorable Linda Coleman, Circuit Court Judge

This, the 18th day of December, 2019.

Respectfully Submitted,

INDIGENT APPEALS DIVISION
OFFICE OF STATE PUBLIC DEFENDER

BY: /s/ W. Daniel Hinchcliff
W. Daniel Hinchcliff
COUNSEL FOR APPELLANT

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BRIEF OF THE APPELLANT

STATEMENT OF THE ASSIGNMENT

This cause is properly before this Court.

STATEMENT OF THE ISSUES

None

STATEMENT OF THE CASE

This appeal proceed from the Circuit Court of Quitman County, Mississippi, and a judgement of conviction for the crimes of capital murder during a robbery, enhanced by the use of a firearm, and aggravated assault aggravated by the use of a firearm against Darrell Walter following a jury trial commenced March 4, 2019, the honorable Linda F. Coleman, Circuit Judge presiding. Appellant Darrell Walter was sentenced to a term of life without parol for the crime of capital murder, ten (10) years for the crime of aggravated assault, and five (5) years for the firearm enhancements, with counts and enhancements to run concurrent to one another. Darrell Walter is presently incarcerated in the Mississippi State Penitentiary.

FACTS

David Jackson operated a gambling establishment known as Jackson's in Lambert, Quitman County, Mississippi. (T. 154-156, 183, 198, 479). The gamblers that frequented Jack's were all older men and had all known each other for a number of years. On the evening of August 6, 2017, Elliot Hunt, Jerry Cooley Jason Roberson, Mack Riley, and Kelvin Blackburn ("Big Man") had gathered to shoot dice. (T. 198, 201-202, 207, 354, 451-452, 481). Denise Lockhart worked nearby at the King Curtis Club, and had stopped in to relax. At some point that night two younger men came in; Darrell Walter, known as "CoCo," and Dantavius Applewhite, known as "Tate," notable for his multiple tattoos. (T. 175-176, 203, 206).

The two younger men at first stood around the gaming table. One of the men, "CoCo" went to the bathroom, and when he came out he was brandishing a pistol, a revolver. (T. 209-210, 362, 411, 459, 489). He put the gun to the head of the night's apparent winner "Big Man." (T. 207, 209, 361, 470). CoCo said to Big Man "you know what this is" or "you know what time it is." (T. 209, 361, 459, 489, 491). Big Man grabbed CoCo and they wrestled, saying "nah cuzz." (T. 210, 361-362, 459, 491). The perception of the witnesses was that CoCo was robbing or trying to take the money Big Man had been tucking away in his pocket. (T. 239, 367, 401-402, 409-410).

At some point after CoCo shot Big Man once, Tate pulled a pistol and began to shoot. (T. 211, 219, 362, 460). CoCo stood over Big Man, who had fallen, and "emptied out." (T. 212, 217, 367.) CoCo went into Big Man's pocket, though no one actually saw him take Big Man's roll. (T. 219, 367, 401-402). The two men ran out. (T. 211, 217, 461).

Police involvement and forensic evidence was quantitatively much less than the

eyewitness evidence. Patrolwoman Stella Keaton of the Lambert police responded and found a man on the floor of Jack's twitching and bleeding heavily. It was Kelvin Blackburn. She helped secure the scene, and took pictures. (T. 137-156). Amber Conn, qualified as a crime scene analyst, took photographs of the scene, and collected evidence; including a hat and shell casings. She also demonstrated the trajectory of rounds fired and recovered. (T. 246-298). The medical examiner, Mark LeVaughn, conducted an autopsy on Big Man and determined the cause of death as multiple gunshot wounds, and the manner of death as a homicide. He recovered two projectiles from the body, one of which he thought could be a .22 caliber. (T. 326-346). An expert firearms examiner identified .9 mm casings, and projectiles that could be both .9mm and .22. He understood there had been two guns at the shooting. No weapons having been recovered, there were no matches. (T. 326-345).

The first eyewitness, Denise Lockhart, was sitting watching television as her friend "Mack" gamble. (T. 170, 178). Denise had walked over from the King Curtis Lounge, where she had been working as a bartender. (T. 185). She was there when CoCo and Tate came in. (T. 175). She knew them both, and that Tate was Dontavius Applewhite. She was startled by a loud sound, the first shot, and jumped to the floor. She stayed down and saw little. (T. 179). She was getting up on one knee when more shots were fired. (T. 179). She did see one person that was shot in the arm. (T. 180).

Mack Riley was one of the frequent gamblers at Jackson's. He had arrived alone that night. Though he was with Denise and the father of two of Denise's children. He was at the table shooting dice. (T. 198-201). He saw when Denise came in and sat in the recliner. (T. 202-203). He described the players and those playing. Big Man had been winning and had winnings of at

least \$3,000.00. (T. 207). He also observed when “Walter and Applewhite” came in. (T. 203). He said CoCo (Walter) came in, left and reentered (T. 206). Tate came in, and Riley described Tate and his tattoos. (T. 204-205). Riley saw Darrell Walter go to the bathroom and come out with a gun,. He said Darrell walked up to “Big” at the table and put the pistol, a revolver, up to his head. (T. 210). Darrell said, that Big Man knew “what this is.” (T. 209). Riley observed that CoCo had made a demand for money from Big Man. (T. 239). A tussle ensued. There was one shot, then several more. Riley saw CoCo shoot Big Man. (T. 211). Meanwhile Applewhite started shooting. (T. 211). Applewhite shot all his rounds then ran out the door. CoCo also fired all his rounds while Big was on the floor. (T. 212, 217). His perception was that Tate and CoCo were working in unison. After he emptied his gun, CoCo was “over” Big Man, who had money in his pocket. (T. 219). During the events, Riley had gone to the floor for cover. He saw Jackson break and run out of the building. (T. 222, 229).

Another of the gamblers, Jason Roberson, was also shooting dice that night with Big Man and others. He saw one guy go to the bathroom. The guy came back with a gun, a revolver, which he put up to Big man’s head. He said “[y]ou know what this is.” Big Man replied “[n]ah cuzz” and grabbed the man’s hand. (T. 361-362). They tussled. Roberson heard the gun go off and hit the ground. There were, according to Roberson, four or five shots fired. (T. 368). After the shots stopped, he saw the guy standing over Big Man, going through his pockets. (T. 367, 401-402). Big man had between \$3,000.00 to \$5,000.00 in his hand and pocket. (T. 376). After it all, Roberson ran out. He then realized he had been shot in the arm. (T. 369).

Elliot Hunt knew all the people present at Jackson’s that night. (T. 408). He said two guys tried to take Big Man’s money with a gun. It was CoCo that demanded money. (T. 409-

410). He heard a shot, saw CoCo run, then come back and shoot Big Man. After the first shot, Big man fell. (T. 415). He used a revolver. (T. 411). The only gun he saw was the revolver. (T. 415). Hunt described the man with CoCo as having tattoos on his face. (T. 414). Although he did not see CoCo take money from Big Man, he was sure that Jackson did not take the money. (T. 426, 429).

Jerry Cooley was gambling with Big Man and Patrick Shegog, among others. (T. 451-452). As they shot dice, the man with the tattoos stood behind Cooley, so he moved to a different position at the table. (T. 454,). He did not get a good look at Walter, but did see him come out of the bathroom and put a gun to Big Man's head. He did observe that he wore glasses. The man with the glasses said to Big Man "[y]ou know what this is." Big man replied "[n]ah cuzz, you know" and grabbed the man by the arm. They wrestled towards the bathroom. (T. 459). Cooley heard a shot, then silence, and then more shots. Cooley had dived under the table and did not see the events. (T. 460). The shooters fled out the door, and Cooley ran outside, leaving his hat behind, the hat that was recovered and placed in evidence. (T. 461, 465). Cooley had borrowed some money from Big Man, and knew he had at least \$3, 500.00 on him. (T. 470).

The final witness was David Jackson, the operator of the gambling establishment located in Quitman County, Mississippi. (T. 479). That night Mack Riley, Elliot Hunt, Jerry Cooley, Kelvin Blackburn, and Jason Roberson were present gambling together. (T. 480-481). Jackson explained the layout of his building, the nature of the gaming, and where everyone was situated. (T. 483-486). Those players were present when CoCo and Applewhite, the tattooed man, came in. (T. 486, 505-506). Later, he saw CoCo go to the bathroom. He came back holding a pistol. CoCo said to Big Man "[y] know what time it is" while putting the gum up to Big Man's head.

(T. 507). Big man grabbed the gunman and they tussled. The gun went off. (T. 489-491). CoCo ran out, but returned and there were more shots. Jackson saw Big Man laying on the floor, shaking and gasping. (T. 494). Jackson took a shirt and wipe Big man's mouth.

Jackson had observed Big Man having significant cash, a large wad. (T. 495). When the police came, he retrieved Big Man's wallet and gave it to the police.

Upon the foregoing proof, the State rested. The defense chose to rest, and the defense motion for a directed verdict was denied. (T 432-451).

SUMMARY OF THE ARGUMENT

None

ARGUMENT

None

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.

CONCLUSION

There are no issues that counsel can in good faith present to this Court in the appeal on this matter. An additional forty (40) days enlargement of time is requested for Darrell Walter to file a pro se brief, should he desire to do so.

Respectfully submitted,
DARRELL WALTER, APPELLANT

By: /s/ W. Daniel Hinchcliff
W. Daniel Hinchcliff, His Attorney

CERTIFICATE OF SERVICE

I, W. Daniel Hinchcliff, Counsel for Henry DARRELL Walter, do hereby certify that on this day I electronically filed the forgoing **BRIEF OF THE APPELLANT** with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Honorable Jason L. Davis
Attorney General Office
Post Office Box 220
Jackson, MS 39205-0220

Further, I have this day caused to be mailed electronically or via United States Postal Service, First Class postage prepaid, a true and correct copy of the above to the following non-MEC participants:

Honorable Linda Coleman
Circuit Court Judge
P.O. Box 458
Cleveland, MS 38732

Honorable Lesley Flint
Assistant District Attorney
Post Office Box 848
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Darrell Walter, MDOC #176499
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This the 18th day of December, 2019.

/s/ W. Daniel Hinchcliff
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