

**IN THE COURT OF APPEALS FOR THE
STATE OF MISSISSIPPI**

DARON J. ROUSTER

APPELLANT

VS.

DOCKET NO: 2006-TS-00451

STATE OF MISSISSIPPI

APPELLEE

APPELLANT'S BRIEF

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CERTIFICATE OF INTERESTED PERSONS

The following persons have an interest in the outcome of this case:

1. **Daron J. Rouster**, Mississippi Department of Corrections
2. **Jim Hood**, Attorney General, Jackson, MS.
3. **Charles W. Maris, Jr.**, Assistant Attorney General, Jackson, MS.
4. **Bobby B. DeLaughter**, Hinds County Circuit Court Judge, Jackson, MS.

Respectfully submitted,

This the 7 day of November 2006



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STATEMENT OF ISSUES

ISSUE ONE:

THE TRIAL JUDGE ABUSED HIS DISCRETION BY EXCLUDING CRUCIAL TESTIMONY BY SUSTAINING THE STATE'S OBJECTION TO DEFENSE COUNSEL'S INQUIRY INTO WHETHER CORDERRIES BROWN AND CHRISTOPHER BROWN WERE INTOXICATED.

STATEMENT OF THE CASE

On February 16, 2005 Daron Rouster, (hereinafter “Daron”), was visiting his girlfriend, Rhonda Brown(hereinafter “Rhonda”), and their two children at the Audubon Grove apartments located in Jackson, Mississippi. The two had been dating for three years and Daron was a frequent overnight guest at Rhonda’s apartment. That morning, Daron and Rhonda engaged in a heated argument involving Daron’s attempt to leave the apartment and Rhonda’s belief that his sudden departure attempt was due to another love interest that was possibly awaiting his arrival. Daron explained to Rhonda time and again that he was not cheating on her but that he was just ready to leave the apartment. Rhonda did believe this explanation and at that point the argument turned from verbally heated to physically violent.(Tr. at 180).

At this point Daron picked up his cell phone and began calling some friends in an attempt to get ride home from Rhonda’s apartment. These facts are disputed but it appears that at that point Rhonda picked up a kitchen knife and began stabbing Daron in the chest and then the two started wrestling for control of the knife.(Tr. at 180). During this struggle for the possession of the knife Rhonda’s two brothers, Corderries Brown and Christopher Brown (hereinafter “Corderries” and “Christopher” respectively), entered Rhonda’s bedroom and attacked Daron.(Tr. at 181).

During this fight, Daron reached under the mattress and grabbed a nine millimeter

handgun and then everyone began fighting over the gun. The facts here are again in dispute but it was at this point during the struggle that numerous shots began to be fired off and Christopher, Corderries and Daron were all severely wounded and Rhonda was tragically killed.(Tr. at 181-82).

Daron was so severely wounded that, after the police arrived, he was rushed to the hospital where his life was saved, despite being shot through the chin and losing the ability to speak due to his injury. Daron was later charged with one count of Murder, Rhonda Brown, and two counts of Aggravated Assault, Christopher and Corderries Brown. Daron went to trial on December 13, 2005 in the Hinds County Circuit Court before the honorable Bobby B. DeLaughter. Daron was subsequently convicted by a jury of his peers on December 15, 2005 of one count of Murder and two counts of Aggravated Assault. Daron was sentenced to life imprisonment for Murder and to two twenty year sentences for Aggravated Assault, to run consecutively. He is currently serving out his sentence at the Mississippi State Penitentiary located at Parchman, Mississippi.

SUMMARY OF THE ARGUMENT

In this case, the Court must decide whether the lower court abused its discretion by excluding crucial testimony when it sustained the state's objection to a line of questioning that went to the entire theory of defense, which was a self-defense. In the case at bar, Daron's theory of defense at trial was self-defense and, because he raised that as a defense, the testimony regarding whether Corderries and Christopher were using drugs should have been admitted. In limiting Daron's right to fully confront the witnesses against him, the trial judge abused his discretion and this abuse infringed upon his Sixth Amendment right to confrontation and his right to confrontation as set forth in *Article 3, Section 26 of the Mississippi Constitution*, which exists in order to preserve a defendant's right to confront his accusers.

Therefore, for the above reasons, Daron Rouster's conviction and sentence should be reversed and vacated, respectively, by this honorable Court and the matter remanded to the lower court for a new trial on the merits of the indictment on the charge of murder and two counts of aggravated assault, with instructions to the lower court.

ARGUMENT

ISSUE ONE:

THE TRIAL JUDGE ABUSED HIS DISCRETION BY EXCLUDING CRUCIAL TESTIMONY BY SUSTAINING THE STATE'S OBJECTION TO DEFENSE COUNSEL'S INQUIRY INTO WHETHER CORDERRIES BROWN AND CHRISTOPHER BROWN WERE INTOXICATED.

“In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him”*U.S. Const. Amend. VI*. § 2 (the “confrontation Clause”). The guarantee of the Confrontation Clause, made applicable to the states by the Fourteenth Amendment, is paralleled in *Article 3, Section 26 of the Constitution of the State of Mississippi (1890)*. *Black v. Stare*, 506 So. 2d 264, 266-267 (Miss. 1987) (citing *Delaware v. Van Arsdall*, 475 U.S. 623 (1986)). The right of confrontation includes the right to fully cross-examine witnesses. *Richardson v. Marsh*, 481 U.S. 200, 207 (1987). As the Mississippi Supreme Court declared in *Miskelley v. State*, 480 So. 2d 1104 (Miss. 1985):

[C]ross-examination of a witness is a valuable right which may not be infringed upon or bridled. Cross-examination is one of the most potent tools in the trial of lawsuits to ascertain the truth of a matter. Where there is doubt as to the relevancy of the examination, the scales should weigh in favor of admitting the examination.

Id. at 1108.

Daron's counsel attempted to ask Corderries whether he and Christopher were smoking marijuana right before the fight occurred between Daron, Rhonda, Christopher and himself. (Tr. 217). The state objected to this line of questioning and the trial judge sustained their objection after a proffer to the court was made by Daron's counsel. (Tr. 218-19). In pursuing this line of questioning, Daron's counsel was attempting to establish that Corderries and Christopher were highly intoxicated and that due to this intoxication they had a propensity for violence. The theory of defense was that this propensity of violence led Corderries and Christopher to attack Daron first and that he acted out of self defense and could not be guilty of murder and aggravated assault.

While the jury was out, the trial judge gave his rationale for sustaining the state's objection to this line of questioning by stating that "Well, it would seem to me that marijuana, as alcohol, affects different people in different ways. I have known people that becoming intoxicated they get meaner. I have known people that get intoxicated, but, you know, they mellow out." (Tr. 219). The trial judge did not base his opinion on expert testimony but rather just assumed what types of propensities individuals have while intoxicated and that it was irrelevant to the theory of defense. "There are times when it is proper to permit introduction of testimony to show the intoxicated condition of the deceased for the purpose of showing whether there was any present and pressing necessity for the defendant to take the life of the deceased to protect his own, or to prevent great bodily harm." *Shinall v. State*, 199 So. 2d 251, 259 (Miss. 1967).

“Mississippi Rule of Evidence 404(a)(2) allows the accused to introduce character evidence of the victim in limited circumstances. The comment to the rule states that under specific circumstances, the character of the victim may be relevant. One of these circumstances is a situation in which the “defendant claims that the victim was the initial aggressor and that the defendant’s actions were in the nature of self-defense.” . *Moore v. State*, 791 So. 2d 849 (Miss. Ct. App. 2001)(citing *Edwards v. State*, 726 So. 2d 274, 277 (Miss. Ct. App. 1998)). During Daron’s direct testimony he alleged that Corderries was the initial aggressor in stating that “when Corderries jumped on top of me, I reached for it (the gun). I was unable to grab it right off but I managed to while he was busy hitting me.” (Tr. 398). Daron’s counsel was trying to establish a theory of self-defense by establishing that Corderries and Christopher Brown were intoxicated and that they had a propensity for violence, which led to Corderries becoming the initial aggressor of the altercation that resulted in the death of Rhonda Brown and to the shooting of Daron, Corderries and Christopher.

In *Weeks v. State*, 493 So. 2d 1280 (Miss. 1986), the Court stated that in this case “the prosecution alleged that the general rule regarding inadmissibility of character evidence concerning a homicide victim was applicable and the exception thereto was not applicable since the defense offered by Weeks was accident or misfortune and not self-defense and therefore there was no issue as to who was the aggressor. Prior to the beginning of the trial the trial judge ruled that the findings by the persons performing the


autopsy on Maxwell as to the drugs present in his body following the homicide was relevant and admissible, however, he excluded the other proposed testimony.” The trial court did not abuse its discretion in not allowing the introduction of the excluded evidence for the simple reason that Weeks was not claiming self-defense and for the further reason that at the time of the shooting he did not know who the driver of the car was. Furthermore, the issue of murder was not submitted to the jury only the issue of manslaughter. Self-defense was not before the jury.”*Id.* at 1284. In *Weeks*, the Mississippi Supreme Court ruled that trial judge did not abuse his discretion in excluding testimony about whether the victim had drugs present in his body at the time of the homicide because the defendant did not claim self-defense. In the case at bar, Daron’s theory of defense at trial was self-defense and, because he raised that as a defense, the testimony regarding whether Corderries and Christopher were using drugs should have been admitted. In limiting Daron’s right to fully confront the witnesses against him, the trial judge abused his discretion and this abuse infringed upon his Sixth Amendment right to confrontation and his right to confrontation as set forth in *Article 3, Section 26 of the Mississippi Constitution*, which exists in order to preserve a defendant's right to confront his accusers.

CONCLUSION

Daron Rouster herein submits that based on the propositions cited and briefed herein above, together with any plain error noticed by the Court which has not been specifically raised, the judgment of the trial court and his conviction and sentence should be reversed and vacated, respectively, and the matter remanded to the lower court for a new trial, with instructions to the lower court. The Appellant further states to the Court that the individual errors as cited herein above are fundamental in nature, and, therefore, cannot be harmless.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I, Shaun E. Yurtkuran, counsel for the Appellant, do hereby certify that I have this day mailed postage fully pre-paid/hand delivered/faxed, a true and correct copy of the foregoing Brief of Appellant to the following interested persons:

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Mississippi Supreme Court Clerk
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This the 7 day of November, 2006



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