

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CHRISTOPHER DARNEEL EUGENE ROACH

APPELLANT

VS.

NO. 2008-KA-2147-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

The grand jury of the First Judicial District of Harrison did indict Christopher Darneel Eugene Roach for the crime of MURDER in violation of *Miss. Code Ann.* §§ 97-3-19(1)(a). (Indictment, c.p.6). After a trial by jury, Judge Roger T. Clark, presiding, defendant was found guilty beyond a reasonable doubt of the crime. (Verdict of Jury, c.p.55). The trial court sentenced defendant to LIFE in the custody of the Mississippi Department of Corrections.

After denial of post-trial motions this instant appeal was timely noticed.

STATEMENT OF FACTS

Well, defendant and the victim checked into a motel room off of Hwy. 49 near the Mississippi Gulf Coast. Defendant and the victim got in a scuffle. Defendant got shot in the hand, the victim got shot six times. The victim, Ms. Vonchartter from seven recent gunshot wounds her body from six different bullets at close range. One entered the left side of her neck, went through her left lung, her heart, her diaphragm, and the liver. A second one went through her back, went through her spine, her spinal cord into her right lung. Her third entered the right upper back, into the right lung and into the right chest wall. Another grazed the left shoulder. Another one hit her right forearm, and the final hit her left thigh. Those gunshot wounds killed Vonchartter. (Tr. 96-99). Expert forensic pathology testimony indicated the gunshot wound the defendant received in his hand was consistent with him holding the victim down and shooting the victim through his hand. Tr. 100.

Defendant admitted to shooting the victim. He claimed it was heat of passion after getting shot in the hand. The jury heard the testimony saw the evidence and found defendant guilty of murder.

SUMMARY OF THE ARGUMENT

I.

THERE WAS LEGALLY SUFFICIENT TESTIMONY AND EVIDENCE TO SUPPORT THE DELIBERATE DESIGN ELEMENT OF MURDER.

There was evidence that defendant intentionally, with deliberate design shot his victim several times. The evidence and expert testimony indicated the defendant's own gunshot wound in his hand could have been self-inflicted. There was sufficient evidence of deliberate design to support the jury verdict of murder.

Issue II.

THERE WAS EVIDENCE OF MANSLAUGHTER AND MURDER.

While generally, being shot, may be legally sufficient to support a reaction in "heat of passion" such was not necessarily present in this case. There was evidence that defendant may have inflicted the wound on himself in the course of the struggle and shooting his victim six or seven times. Such was a question for the jury.

ARGUMENT

I.

THERE WAS LEGALLY SUFFICIENT TESTIMONY AND EVIDENCE TO SUPPORT THE DELIBERATE DESIGN ELEMENT OF MURDER.

In this initial allegation of trial court error defendant just claims flat-out, as a matter of law, there was no evidence of deliberate design.

Such is not the case. There was evidence that defendant fought with his victim held her down and accidentally shot himself through the hand, while shooting his victim six times. Tr. 100.

Accordingly, there was evidence of deliberate design and after defendant testified there was evidence of manslaughter. There was evidence of both murder and manslaughter, – a jury question. The trial judge was correct in denying the motion for directed verdict as there was a question of fact for the jury.

¶14. *Gossett v. State*, 660 So.2d 1285 (Miss.1995), involved the appeal of a murder conviction wherein the defendant claimed that the victim was shot spontaneously during a scuffle and that the shooting constituted manslaughter at best. Even though the defendant was charged with murder, the jury was instructed on manslaughter as well. The Mississippi Supreme Court upheld the murder conviction finding that the evidence demonstrated “ample time in which to form the requisite intent for the crime of murder.” *Gossett*, 660 So.2d at 1293. The court held that, “[w]hile there was certainly an evidentiary basis for the crime of manslaughter, the trial court properly granted a manslaughter instruction and the jury nevertheless unanimously agreed that *Gossett* was guilty of murder.” *Id.* In making this determination the *Gossett* court also held that:

Malice aforethought is defined as the equivalent of 'deliberate design.' [D]eliberate always indicates full awareness of what one is doing, and generally implies careful and unhurried consideration of the consequences. 'Design' means to calculate, plan, contemplate ... deliberate design to kill a person may be formed very quickly, and perhaps only moments before the act of consummating the intent.

Id.

¶ 15. The jury at Bailey's trial was instructed on murder, manslaughter, and self-defense. It chose to convict on the murder charge. We find, after viewing all of the evidence in a light most favorable to the verdict, that reversal is not warranted as the evidence is legally sufficient and the great weight of the credible evidence supports the verdict. The trial judge did not err in refusing to grant Bailey's motion for directed verdict and JNOV, nor did he abuse his discretion in denying Bailey's motion for a new trial.

Bailey v. State, 785 So.2d 1071 (Miss.App. 2000)

In conclusion, the State would argue there was legally sufficient evidence of murder and manslaughter to send the question to the jury for resolution.

There being no error, no relief should be granted on this first allegation of error.

Issue II.
THERE WAS EVIDENCE OF MANSLAUGHTER AND MURDER.

The last allegation of error it is argued that a gunshot, whether accidental or not, is provocation capable of inciting a 'heat of passion' response. The State will not quibble about that statement. However there was also evidence that defendant inflicted the wound on himself (accidentally or not) – shooting himself through his hand – in shooting his victim multiple times. Tr. 100.

If the shooting was because defendant, accidentally or intentionally, inflicted his wound then such is not sufficient to provocation to mitigate the shooting to manslaughter.

We are of the opinion, however, that the rule is well-settled, that the issue as to whether or not an admitted homicide is murder or manslaughter is ordinarily a question for the jury on conflicting evidence. Lord v. State, 237 Miss. 12, 112 So.2d 528 (1959); Crockerham v. State, 202 Miss. 25, 30 So.2d 417 (1947); Anderson v. State, 199 Miss. 885, 25 So.2d 474 (1946); Magee v. State, 200 Miss. 861, 27 So.2d 767 (1946), suggestion of error as to death

Kinthead v. State, 190 So.2d 838, 840 (Miss. 1966)(Emphasis added).

This was not just a matter of evidence of provocation equals automatic manslaughter. There was conflicting evidence. Accordingly, it was for the jury to decide. There was evidence supporting deliberate design murder, – multiple shots fired at close range, and the injury defendant received could have been where he

accidentally shot himself. Such is murder, contrary to what defendant now argues.

Consequently, there being an admission of the killing (tr.126) and a conflict in the evidence such is a question for the jury to decide. This rationale is support by the fact and the law. No error was committed by the trial court in denying the motion for directed verdict or motion for new trial.

Defendant had a fair trial, the questions of fact and law, were relatively limited and clearly presented. The jury was instructed on both murder, manslaughter, defenses and definitions. (C.p.48, 52, 53, 54). It decided on murder. There is evidence supporting such a verdict.

Therefore, no relief should be granted based upon this last allegation of trial court error.

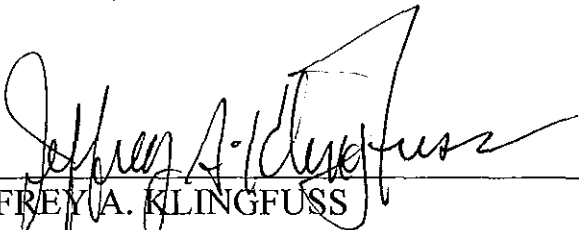
CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal the State would ask this reviewing court to affirm the guilty of murder verdict of the jury and the sentence of the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

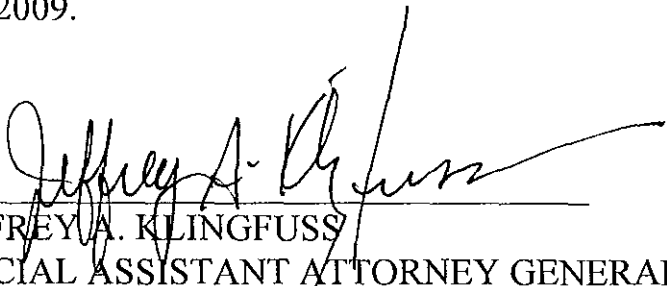
I, Jeffrey A. Klingfuss, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 16th day of October, 2009.



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