IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI
NO. 2008-KA-02147-COA

CHRISTOPHER DARNELL EUGENE ROACH **APPELLANT**

V.

STATE OF MISSISSIPPI **APPELLEE**

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 so that the justices of this court may evaluate possible disqualifications or recusal.

1. State of Mississippi
2. Christopher Darnell Eugene Roach

THIS 17th day of July, 2009.

Respectfully submitted,

CHRISTOPHER DARNELL EUGENE ROACH

By: Boty McDonald

Boty McDonald, Attorney for Appellant

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF THE ISSUES	1
STATEMENT OF THE CASE	1
SUMMARY OF THE ARGUMENT	6
ARGUMENT	6
CONCLUSION	9
CERTIFICATE OF SERVICE	10

TABLE OF AUTHORITIES

CASES:

Fair v. State, No. 2008-KA-00767-COA, (MS App., decided June 2, 2009) 8

Mullins v. State, 493 So.2d 971 (Miss. 1986) 8

Smith v. State, 646 So.2d 538 (Miss. 1994) 7

Tait v. State, 669 So.2d 85 (Miss. 1996) 7

Wetz v. State, 503 So. 2d 803 (Miss. 1987) 7

STATUTES

Miss. Code Ann. §97-3-19 (Rev. 2006) 7

Miss. Code Ann. §97-3-35 (Rev. 2006) 8

STATEMENT OF THE ISSUES

ISSUE #1:

THE VERDICT OF THE JURY IS CONTRARY TO ESTABLISHED PRINCIPLES OF LAW AND AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE AS TO THE INDICTED CHARGE OF MURDER

ISSUE #2:

THE CONDUCT OF THE DEFENDANT CONSTITUTED THE CRIME OF MANSLAUGHTER, NOT MURDER

STATEMENT OF THE CASE

This appeal involves the trial of Christopher Darnell Eugene Roach on the charge of murder. The trial occurred November 5th and 6th , 2008, in the Circuit Court of Harrison County, Mississippi, Honorable Roger T. Clark, Circuit Judge, presiding. Roach was convicted of murder, sentenced to life imprisonment and is presently incarcerated with the Mississippi Department of Corrections.

Facts

Christopher Roach and Vonchartter Bailey had been husband and wife. Also, they were parents to a child. Although divorced, they maintained an amicable relationship. And, as an example of that amicable relationship, Roach and Ms. Bailey, spent considerable time together in the days before that Sunday, April 1st, 2007 – the day when Roach killed Ms. Bailey.

On Friday, March 30th, 2007, Roach and Ms. Bailey spent the day together and, then, spent the night together. During the day, they rode around town in the Jackson area until Roach dropped Ms. Bailey off at her mother's house around 4:30 p.m. Then, later, in the early evening, Roach and Ms. Bailey got together again and stayed the night together at Roach's residence.

The next day, Saturday, March 31st, Ms. Bailey had to work. She worked as a security guard, on an overnight shift. She invited Roach to come visit her while she worked; he did visit and, ultimately, remained with Ms. Bailey at her job during the entire overnight shift. During her work that night, Ms. Bailey told Roach of her plan – once she finished her shift – to travel to Gulfport for a couple of days. And, Ms. Bailey invited Roach to go with her. He accepted.

Upon completing her shift, Ms. Bailey and Roach went to Ms. Bailey's residence (at her mother's house) where Ms. Bailey gathered clothes and items for the trip, which she said would last a couple of days. Ms. Bailey also borrowed her mother's car for the trip due to her worry that her car would not hold up for the travel. Next, she and Roach went to his residence for him, likewise, to gather clothes and other items needed for the trip.

It was sometime relatively early on that Sunday morning that Ms. Bailey and Roach, now packed, departed for Gulfport.

Included among the items packed for the trip was: marijuana, powder cocaine, liquor and beer.

With Ms. Bailey driving, both Roach and Ms. Bailey snorted cocaine during the ride. Additionally, Ms. Bailey drank beer and Roach drank liquor.

Their destination was the Sun Suites hotel in Gulfport. They arrived in the early afternoon. Both went in to the hotel office, with Ms. Bailey reserving and paying for the intended two nights of stay. After taking their things to the room, Ms. Bailey and Roach made a quick trip to a local store to gather some food and drink to bring back to the room. Finally, settled into the room, they began to relax for a while in the room.

This relaxing included snorting more cocaine, smoking marijuana, and drinking alcohol. During this period of relaxing in the room, Roach called his mother back in Jackson to let her know where he was. He called because he had not told her about the sudden trip with Ms. Bailey to Gulfport. During that phone call, Ms. Bailey also took the opportunity to exchange conversation with Roach's mother.

This period of relaxing in the room lasted approximately one and one-half hours.

In addition to the cocaine, marijuana and alcohol, there was another non-standard item brought along for the trip: a gun. Roach brought along the gun he carried for personal protection.

Twice before Roach had been shot. Each time had been during a confrontation. The most recent time, he had been shot in the face and, ultimately, lost his right eye from the injury inflicted by the shooting. From that most recent shooting, he still had two bullets lodged in his head.

So, he carried a gun. Always. It was loaded. Always.

On this occasion, the gun was packed in his gym bag. It was still in the gym bag during this period of relaxation in the hotel room. . . until. . . Ms. Bailey retrieved the gun, to play with it, apparently.

Ms. Bailey retrieved the gun. Roach was sitting on the bed as Ms. Bailey came

around and picked the gun out of Roach's gym bag. Then, Ms. Bailey walked with the gun to the other side of bed, that being the side of the bed closest to the bathroom. Ms. Bailey was standing, holding the gun.

At this point, both Ms. Bailey and Roach were under the influence of drugs and alcohol.

Roach asked Ms. Bailey to give him the gun back. She refused.

Roach got up, walked around the bed to where Ms. Bailey was standing with the gun and, again, asked for the gun back. Again, she refused.

A tussle ensued. A tussle over that gun.

Ms. Bailey turned around to prevent Roach from grabbing the gun. Roach, an above average man in size and armspan, reached around Ms. Bailey with his arms, in effect enveloping her, while he attempted to get the gun out of her hands. She held onto the gun.

Suddenly, the gun fired.

Roach was shot – in the left hand, between the thumb and wrist. The bullet exited from the pinky finger.

What happened next? "I have no idea," Roach testified at trial. Roach said his next memory was "waking up in the jail room."

What happened next? Roach shot and killed Ms. Bailey. He shot her six times.

Then, according to multiple witnesses, over the next several minutes, Roach engaged in an odyssey of strange behaviors. He walked in another hotel room, spoke to the two occupants, and dropped the gun on the floor. He began to disrobe. Blood drops of his marked his trail. He walked around various places at the hotel and then

made his way across the hotel parking lot to a convenience store located adjacent to the hotel. His wildly erratic behavior continued as he walked virtually unclothed into the convenience store, still dropping blood with each step, seeking to use a pay phone. Then, he went outside the store to the gas pumps, where he approached a customer with verbal ramblings and, finally, was subdued by police after a struggle.

SUMMARY OF THE ARGUMENT

Christopher Darnell Eugene Roach respectfully argues the evidence presented at the trial was insufficient as a matter of law to sustain a conviction for murder. The facts relied upon by the state to support the verdict do not rise to a level sustaining a conviction for murder but, instead, sustain a conviction for manslaughter.

Roach argues that as a result of the above, this Court should vacate the judgment of the trial court and remand the matter for a new trial. In the alternative, Roach would argue the matter should be remanded to the trial court for re-sentencing on the lesser-included-offense of manslaughter.

ARGUMENT

ISSUE #1:

THE VERDICT OF THE JURY IS CONTRARY TO ESTABLISHED PRINCIPLES OF LAW AND AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE AS TO THE INDICTED CHARGE OF MURDER.

Roach submits the trial judge erred in not granting his request for a directed verdict in his favor at the end of the state's case-in-chief, and at the close of all the evidence. The state failed to meet its burden of proof by a requisite showing of evidence beyond a reasonable doubt as to the element of "deliberate design" in the offense charged. Additionally, the trial court erred in not granting Roach's Motion for JNOV and/ or New Trial. The verdict of the jury and the judgment and sentence of the trial court is contrary to established law and against the overwhelming weight of the evidence.

Roach submits that the jury's verdict based upon the evidence presented at the trial, when considered in the light most favorable to the state, together with any and all reasonable inferences which may be drawn therefrom, is contrary to law and manifestly wrong. Considering the credible evidence as true, Roach submits that at best, fair minded jurors justifiably might have only found him guilty of manslaughter. Tait v. State, 669 So.2d 85, 88 (Miss. 1996); Smith v. State, 646 So.2d 538, 542 (Miss. 1994); May v. State, 460 So.2d 778, 781 (Miss. 1984).

Considering the record in its entirety, Roach submits that as a matter of law, there exists sufficient doubt such that no reasonable juror could have convicted him on the indicted charge of murder. Tait v. State, 669 So.2d at 88.

In keeping with established principles of law in this jurisdiction, Roach would argue the trial judge erred in denying his requests for a directed verdict, JNOV and/or new trial. Prior rulings of this Court establish the threshold inquiry to be this: Are the totality of the circumstances and evidence in record sufficient to sustain a finding of guilty beyond a reasonable doubt? Wetz v. State, 503 So. 2d 803, 808 (Miss. 1987).

For the charge of Murder, pursuant to Miss. Code Ann. § 97-3-19(1)(a) the elements are:

> (1) The killing of a human being without the authority of law by any means or in any manner shall be murder in the following cases:
> (a) ***When done with deliberate design*** to effect the death of the person killed. . . . (emphasis added)

The key element to address – and, the element not proven beyond a reasonable doubt – is "deliberate design." The proof of "deliberate design" does not rise beyond a reasonable doubt. Roach instantaneously reacted. . . to being shot. . . and. . . shot Ms.

Bailey. Yes, he killed Ms. Bailey. No, he did not kill her with "deliberate design."

The evidence presented at the trial was insufficient as a matter of law to prove the element of "deliberate design" necessary to sustain a conviction for murder.

ISSUE #2:

THE CONDUCT OF THE DEFENDANT CONSTITUTED THE CRIME OF MANSLAUGHTER, NOT MURDER.

For the charge of Manslaughter, pursuant to Miss. Code Ann. § 97-3-35, the elements are:

> The killing of a human being without malice, in the heat of passion, but in a cruel or unusual manner, or by the use of a dangerous weapon, without authority of law, and not in necessary self-defense, shall be manslaughter.

In, Fair v. State, No. 2008-KA-00767-COA, at ¶15 (MS App. 2009)[decided June 2, 2009] this court quoted Mullins v. State, 493 So.2d 971, 974 (Miss. 1986) in stating:

> [Heat of passion] is a state of violent and ***uncontrollable rage engendered by a blow or certain other provocation*** given, which will reduce a homicide from the grade of murder to that of ***manslaughter***. Passion or anger suddenly aroused at the time by some immediate and reasonable provocation, by words or acts of one at the time. The term ***includes an emotional state of mind characterized by anger, rage, hatred, furious resentment or terror.***

(Emphasis added.)

In this case, the gunshot by Ms. Bailey hitting Roach – whether accidental or not – was the "blow or certain other provocation" and the "immediate and reasonable provocation" which instantaneously sent Roach into "an emotional state of mind characterized by anger, rage, hatred, furious resentment or terror." In that emotional

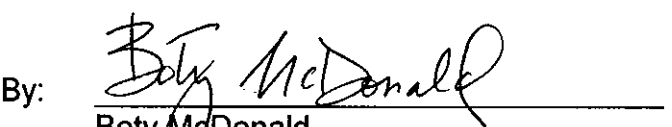
state of mind, Roach acted as a matter of law in a "heat of passion" killing Ms. Bailey. Roach shot Ms. Bailey in response to being shot – in response to that "blow" from the gun – in response to that "provocation." Roach shot Ms. Bailey in the "heat of passion" and, as such, as a matter of law is only guilty of manslaughter.

CONCLUSION

Christopher Darnell Eugene Roach is entitled to have his conviction reversed and the matter remanded to the trial court for a new trial. In the alternative, Roach is entitled have his conviction on the charge of murder reversed and the matter remanded to the trial court for re-sentencing on the lesser-included-offense of manslaughter.

Respectfully submitted,

CHRISTOPHER DARNELL EUGENE ROACH, Appellant

By: 

Boty McDonald,
Attorney for Appellant

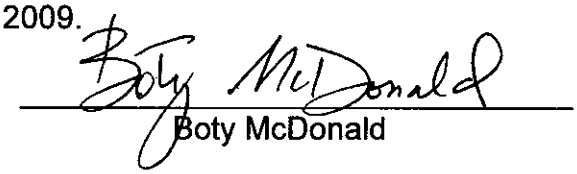
CERTIFICATE OF SERVICE

I, Boty McDonald, hereby certify I have this day served a true and correct copy by U.S. Mail of the above and foregoing *Brief Of Appellant* to:

Hon. Roger Clark, Circuit Judge
Second Circuit Court District
Post Office Box 1461
Gulfport, Mississippi 39502

Hon. Cono Caranna, District Attorney
Post Office Box 1180
Gulfport, Mississippi 39502

This the 17th day of July, 2009.



Boty McDonald

Boty McDonald, MSB No. [redacted]
321 Highway 51, Suite G
Ridgeland, Mississippi 39157
601-853-1680
boty@netdoor.com