

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

**CARL EDWARD RAYFORD**

**APPELLANT**

**V.**

**NO. 2009-KA-1160-COA**

**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 in order that the justices of this court may evaluate possible disqualifications or recusal.

1. State of Mississippi
2. Carl Edward Rayford, Appellant
3. Honorable Cono Caranna, District Attorney
4. Honorable Jerry O. Terry, Circuit Court Judge

This the 26<sup>th</sup> day of January, 2010.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY: 

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APPELLEE

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**BRIEF OF THE APPELLANT**

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**STATEMENT OF THE ISSUES**

- I.     **THE EVIDENCE WAS INSUFFICIENT TO SUPPORT THE VERDICT.**
- II.    **THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.**

**STATEMENT OF THE CASE**

This case proceeds from the Circuit Court of Harrison County, Mississippi, and a judgment of conviction for murder entered against Carl Edward Rayford following a jury trial, the Honorable Jerry O. Terry Sr., Circuit Judge, presiding. (C.P. 140-142, R.E. 7-9). The trial subject to this appeal was Rayford's second trial for Terrell's shooting; the first trial resulted in a hung jury (eight -to-four) and, accordingly, a mistrial. (Tr. 313). Upon Rayford's conviction at the second trial, the trial court sentenced him to life imprisonment. (C.P. 141-142, R.E. 8-9). The trial court denied Rayford's motion for new trial. (C.P. 143-45, R.E. 12-13). Rayford now appeals to this Honorable Court for

relief.

## **STATEMENT OF THE FACTS**

### **Rayford's History of Mental Illness and Background Facts**

In 1994, Rayford was diagnosed with major chronic depression, he was prescribed antidepressant medication but stopped taking them. (Tr. 578-80). A doctor's report in 1999 revealed that Rayford did not want to continue psychiatric treatment or take his medication; the reasons were not documented. (Tr. 580, 597). Since 1999, Rayford had been to Gulf Coast Mental Health at least once, but the record reveals nothing more, such as the diagnosis or treatment if any. (Tr. 580).

Rayford's mental illness was so severe that he attempted suicide five times, the first occurring in 1989 when he tried to kill himself by overdosing on Unisom, an over-the-counter sleeping pill. (Tr. 618, 644). The second, occurred in 1994, when Rayford again overdosed on sleeping pills (of a type unidentified in the record). (Tr. 618, 644). Shortly after the second attempt, Rayford made three more attempts; one was by ingesting insecticide; one was by carbon monoxide poisoning, and the last was by a shotgun blast to the stomach. (Tr. 644-65).

In May, 2002, Rayford was employed as a mixer truck operator for Gulf Concrete LLC. (Tr. 538). Dale Ladner, the general manager of Gulf Concrete LLC, was Rayford's boss. (Tr. 538). Ladner testified that Rayford showed up on time, performed his duties very well, and never caused any problems. (Tr. 539). He recalled that Rayford was "a quiet guy" who pretty much "stayed to himself" and interacted with other employees only "occasionally." (Tr. 539). Rodney Terrell also worked as a truck driver for Gulf Concrete LLC. (Tr. 540). Ladner testified that he never received any reports of any conflict between Rayford and Terrell. (Tr. 540).

Albert Parker worked with Rayford every day for about three-and-a-half-years leading up to the incident. (Tr. 546). Parker described Rayford's demeanor as "quiet." (Tr. 547). He testified

that Rayford ate lunch by himself most times, and when he did eat with the other guys, some of them picked on/joked about Rayford for eating potted meat and vienna sausages for lunch. (Tr. 547-48). Parker liked Rayford as a person, and he tried to set Rayford up with his sister, but he never socialized with Rayford outside of the workplace. (Tr. 546-47, 549-50).

Al Jones rented an apartment to Rayford for about three years leading up to the incident. (Tr. 552). Jones never had any problems or concerns with Rayford as a tenant. (Tr. 553). Jones never saw any visitors at Rayford's apartment. (Tr. 553-54). In conversation, Rayford mentioned to Jones a few times that he had problems with his co-workers, but he never revealed any specifics. (Tr. 554).

Beatrice Sessom, Rayford's sister, testified that he was "withdrawn." (Tr. 562). For example, at family gatherings, "he would speak. But the larger the crowd got, the more he shied away from people." (Tr. 563). Sessom's also testified that Rayford told her that his co-workers picked on him and he was going to quit his job. (Tr. 564-65).

#### Facts Surrounding the Incident

On May 6, 2002, at about 6:15 a.m., David Carter, a construction worker, was driving to work when he saw Rodney Terrell standing on the side of 42<sup>nd</sup> Avenue. (Tr. 392). Carter was acquainted with Terrell from working with him at different job sites (although they worked for different companies), so Carter stopped to see if Terrell needed a ride. Terrell did in fact need a ride to work because his car was broken down, so he got in. (Tr. 392-93, 396). After a very short ride—"less than a minute"—Terrell told Carter to drop him off at the corner of 42<sup>nd</sup> Avenue and 20<sup>th</sup> Avenue so he could ride the rest of the way with "his buddy." (Tr. 392, 395-396-97). Terrell got out and said "thank you," and Carter drove off. (Tr. 393).

Meanwhile, Moses Brent was outside of his house (on 42<sup>nd</sup> Avenue) putting out the garbage. (Tr. 398-99). Brent saw Carter drop Terrell off, and he exchanged pleasantries with Terrell as he

(Terrell) walked to Rayford's apartment door in the apartment complex across the street. (Tr. 399, 407). Brent saw the apartment door open and Rayford shoot Terrell about five times with a pistol, killing him. (Tr. 399-403). The first few shots caused Terrell to fall down in the parking lot, and Rayford then stood over Terrell and shot him at least one more time. (Tr. 402-03).

Brent called 911 to report the shooting and then stood by the side of his house, watched Rayford and described his actions to the dispatcher. (Tr. 403-04). According to Brent, Rayford reloaded the pistol, went in his apartment and came back out wearing a different shirt; he then leaned inside his truck, "got a rifle and maybe another gun" and some other "little stuff," loaded them into his car, a Ford Mustang, and drove away in the Mustang. (Tr. 401-03, 411). At trial, Brent testified that Rayford did all of this calmly: "[H]e just walked one place to the other." "[H]e wasn't in too big of a hurry. . . ." (Tr. 412-13).

Police apprehended Rayford about a mile from his apartment. (Tr. 417). After receiving reports describing Rayford's vehicle and direction of travel, Officer Greg Goodman of the Gulfport Police Department pulled his car into 20<sup>th</sup> Street in an attempt to block the roadway. (Tr. 415). Rayford drove around the police car, and Officer Goodman activated his lights, turned around and followed Rayford. (Tr. 416, 429). Rayford then "yielded to the right-hand side of the road, and [he] immediately placed his hands behind his head." (Tr. 417). According to Officer Goodman, Rayford was "calm," he complied with police's orders, and, on the way to the police station, Rayford asked if he could be in a non-smoking cell by himself. (Tr. 417, 422-23, 430, 432-33).

On the passenger seat of Rayford's Mustang, police found a loaded assault rifle, a loaded semi-automatic 9mm handgun, and a bag containing ammunition and extra ammunition clips. (Tr. 418-21, 451, 460, 526-27, Ex. S-9, S-10, S-11, S-12, S-27, S-28, S-29, S-30). Rayford's personalized license plate read "MADMAN7." (Tr. 499).

Officer Craig Peterson of the Gulfport Police Department interviewed Rayford at the police station. (Tr. 500). Rayford told him that his co-workers picked on him, and “he planned to resign from his job that morning.” (Tr. 500-01). At the time of the shooting, Terrell was wearing his work uniform; Rayford was not. (Tr. 409).

### Trial

At trial, Rayford raised the defense of insanity. Dr. Anthony Stock conducted a psychiatric evaluation of Rayford after the incident. (Tr. 576-77). Dr. Stock noted that Rayford had been diagnosed with recurrent depression, and he had, at least on one occasion, been treated with antidepressant medication; he also noted Rayford’s five suicide attempts. (Tr. 577-78). Dr. Stock testified that, during the evaluation, Rayford stated that he had trouble sleeping for about a week before the incident, he was stressed, he would wake up with nightmares, and he worried that people were trying to con him out of his money. (Tr. 582). He felt that his co-workers, as a group, were conspiring against him and stated that they were harassing him. (Tr. 582-83). Dr. Stock testified that Rayford suffered from paranoia. (Tr. 584). Dr. Stock also testified that Rayford suffered from auditory hallucinations; specifically, Rayford reported hearing voices that were trying to con him out of his money; he also admitted hearing whispering voices behind him and a loud voice saying “you’ve got to do what you’ve got to do.” (Tr. 586, 601).

During the evaluation, Rayford described the incident to Dr. Stock as follows:

I was in bed, and someone had buzzed my doorbell. I went to the window, I saw him. I got a rush, [I got] angry so fast the next thing I knew I saw blood. I had a feeling like I was floating. I lost color in my vision. . . .

(Tr. 582).

Dr. Stock explained that the floating condition Rayford described was known clinically as “depersonalization experience,” during which “you can see yourself doing things, but you really



don't feel like you're doing it." (Tr. 582).

He diagnosed Rayford as suffering from severe, recurrent, depression "with psychotic findings;" namely, that Rayford suffered from a "brief psychotic disorder at the time of the shooting." (Tr. 585). Dr. Stock explained that "'psychotic,' by definition, is a lack of reality testing. In other words, you have difficulty realizing what is real and unreal." (Tr. 586). He stated that the "brief psychotic disorder" that Rayford suffered from at the time of the shooting caused Rayford to feel like he was "floating out of his body." (Tr. 587). He also determined that Rayford was not malingering (i.e. faking). (Tr. 589-90). Dr. Stock also ranked Rayford as a 25 to 35 on the global assessment functioning scale, which placed him in the range subject to being "considerably influenced by delusions or hallucinations" (Tr. 595). Finally, Dr. Stock opined that Rayford could not appreciate the quality of his acts or the difference between right and wrong at the time of the shooting. (Tr. 595-96).

Dr. Henry Maggio also examined Rayford after the shooting; Dr Maggio testified for the State. (Tr. 630-32). Dr. Maggio testified that he believed what Rayford told him during the evaluation and he did not find that Rayford was malingering. (Tr. 647). To this end, Dr. Maggio acknowledged that Rayford reported paranoia and hallucinations, as well as the other information discussed in Dr. Stock's testimony. (Tr. 638). Dr. Maggio diagnosed Rayford as suffering from "major depressive disorder, recurrent, moderately severe" "with psychotic ideations by history," meaning he said he had it. (Tr. 646). Dr. Maggio reported that Rayford told him that, on the day of the interview, he was still having hallucinations—"sometimes I hear deceased relatives talking warning me about things that will happen"—however, Dr. Maggio still testified that Rayford was not suffering from psychotic ideations on the day of the evaluation." (Tr. 662, 647-48).

Dr. Maggio ultimately concluded that Rayford knew right from wrong. (Tr. 647). In reaching

this conclusion, he found significant that Rayford had not previously been diagnosed as psychotic. (Tr. 638, 647, 648, 652). He admitted that one can suffer from a brief psychotic disorder, but he did not find that Rayford was under such a condition because Rayford's actions on the day in question were "purposeful" in his opinion. (Tr. 654). Specifically, Dr. Maggio stated:

Why did he grab a gun when he got up? And he sees who is there and he shoots him. And then he does everything that's leading someplace. You know, he's taking his guns with him. . . . we know that could follow directions and instructions [from police], and there you go.

(Tr. 654).

Dr. Maggio testified that he has performed 800 forensic psychiatric evaluations and he has testified for the State 799 of the 800 times "because they call me first." (Tr. 654-55). Of those 800 evaluations, he has only determined the defendant to be insane about 24 times. (Tr. 655).

### **SUMMARY OF THE ARGUMENT**

The evidence was insufficient to support the verdict. It was undisputed that Rayford suffered from severe depression. Also, he believed his co-workers were conspiring against him simply because they made fun of him for eating vienna sausages. He heard voices in his head, and he described the incident consistent with a "depersonalization experience," as testified to by Dr. Stock. The only evidence suggesting that Rayford was sane at the time of the shooting was Dr. Maggio's testimony, which was insufficient to prove beyond a reasonable doubt that Rayford was legally insane at the time of shooting. Accordingly, the State presented insufficient evidence to support the conviction, and Rayford is entitled to have his conviction and sentence reversed and rendered.

Alternatively, the verdict was against the overwhelming weight of the evidence. Because the overwhelming weight of the evidence showed that Rayford was insane at the time of the shooting, he is entitled to a new trial.

## ARGUMENT

### I. THE EVIDENCE WAS INSUFFICIENT TO SUPPORT THE VERDICT.

In reviewing the sufficiency of the evidence, the relevant inquiry is whether, “viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Bush v. State*, 895 So. 2d 836, 843 (Miss. 2005) (quoting *Jackson v. Virginia*, 443 U.S. 307, 315, 99 S.Ct. 2781, (1979)). The verdict will not be disturbed where the evidence so reviewed is such that “reasonable fair-minded men in the exercise of impartial judgment might reach different conclusions on every element of the offense.” *Id.* (citing *Edwards v. State*, 469 So. 2d 68, 70 (Miss.1985)). However, the proper remedy is to reverse and render where the evidence “point[s] in favor of the defendant on any element of the offense with sufficient force that reasonable men could not have found beyond a reasonable doubt that the defendant was guilty[.]” *Id.*

Under Mississippi law, the M’Naughten test is employed to evaluate the defense of insanity. *Hawthorne v. State*, 883 So. 2d 86, 89 (¶9) (Miss. 2004) (citing *Woodham v. State*, 800 So. 2d 1148, 1158 (Miss. 2001)). Under M’Naghten, a defendant is insane if, at the time of committing the act, the defendant “was laboring under such defect of reason from disease of the mind as (1) not to know the nature and quality of the act he was doing or (2) if he did know it, that he did not know that what he was doing was wrong.” *Id.* Under this test, the critical inquiry is “whether the defendant did not know right from wrong *at the time of committing the act.*” *Id.* (emphasis added).

A defendant is presumed sane until a reasonable doubt is raised concerning his sanity. *Hawthorne*, 883 So. 2d at 89 (¶9) (citing *Taylor v. State*, 795 So. 2d 512, 517 (Miss. 2001)). “When such doubt is raised, the State bears the burden of proving the defendant's sanity beyond a reasonable

doubt. *Id.* Whether a defendant is insane is a determination for the jury, “which may accept or reject expert and lay testimony.” *Id.* (citing *Tyler v. State*, 618 So. 2d 1306, 1309 (Miss. 1993)); see also *Groseclose v. State*, 440 So. 2d 297 (Miss.1983) (“Psychiatric and psychological expert witness testimony, while admissible and indeed quite desirable, is not the last word. Lay testimony has long been recognized as being equally admissible and useful where the insanity defense is tendered.”).

The Mississippi Supreme Court has previously reversed a jury verdict of guilty on the issue of insanity based on the sufficiency or overwhelming weight of evidence on several occasions. *See, e.g., Hawthorne*, 883 So. 2d at 89-90 (¶¶8-13); *Holloway v. State*, 312 So. 2d 700 (Miss.1975); *Gambrell v. State*, 120 So. 2d 758 (Miss. 1960).

The State admittedly could offer no motive to explain why Rayford shot Terrell. No witness recalled that Terrell himself ever picked on Rayford or that they had ever been involved in any dispute. Rayford believed that his co-workers were conspiring against him simply because they made fun of him for eating vienna sausages. This psychotic paranoid delusion is the only explanation for the shooting.

Consistent with Rayford’s description of the incident (that he was floating) Dr. Stock concluded that Rayford suffered from a brief psychotic episode (depersonalization) during which he was unable to know the nature and quality of his acts or know the difference between right and wrong.

Thus, a reasonable doubt was raised as to Rayford’s sanity, and the State then bore the burden to prove beyond a reasonable doubt that Rayford was insane at the time of the shooting. *See Hawthorne*, 883 So. 2d at 89 (¶9) (citing *Taylor*, 795 So. 2d at 517). The State failed to meet this burden.

The basis of Dr. Maggio’s opinion that Rayford knew the difference between right and wrong

was unclear; but it was apparently based primarily on (1) the fact that no one had previously diagnosed Rayford as psychotic, (2) his (Dr. Maggio's) opinion that Rayford was not psychotic *on the day of the evaluation*, and (3) his opinion that Rayford's actions on the day in question appeared to be "purposeful."

The fact that no doctor had previously diagnosed Rayford as psychotic has little bearing on whether Rayford was insane *at the time of the incident*, which was the relevant question. Further, Dr. Maggio's opinion seemed to be based, in large part, on his opinion that Rayford was not psychotic *on the day of the evaluation*. To this end, he testified as follows in offering his ultimate opinion:

You put what the reason is, and this happens to be here the diagnosis of a major depressive disorder, recurrent, moderately severe. And in mine I put down "with psychotic ideations by history," meaning he said he had it.

But currently, when I saw him on [the day of the evaluation], I put "without psychotic ideations." So it's a major depression. It's recurrent. It's severe. There's no psychotic ideation that's been documented. . . .

(Tr. 646-47). Under M'Nauten, the critical inquiry is "whether the defendant did not know right from wrong *at the time of committing the act*." *Id.* (emphasis added). Thus, this basis for Dr. Maggio's opinion was misplaced.

Moreover, although Dr. Maggio opined that Rayford was not psychotic because his actions appeared to be "purposeful," Dr. Maggio failed identify or apply any reliable principle or method upon which his opinion was based, as required by Mississippi Rule of Evidence 702. Moreover, Dr. Stock explained that, just because one appears to know what they are doing, does not mean that they are in touch with reality. (Tr. 606, 617).

Finally, Dr. Maggio claimed to believe that Rayford was not malingering; yet, in reaching the conclusion that Rayford was not psychotic, he apparently ignored Rayford's description of the

incident, or Rayford's continuing hallucinations and ludicrous paranoid delusions. At one point he gave the following elusive testimony:

Q. But him thinking his co-workers were conspiring to get him, would that not be a delusion?

A. It would be more - - yeah, it [would] be delisional.

Q. Which would be a psychotic ideation, is that correct, or psychotic ideas?

A. No, no. It's a symptom.

Q. A symptom of what?

A. It's a symptom that he's losing touch, but it doesn't rise to the level of making a diagnosis. . . .

(Tr. 651).

For the foregoing reasons, Dr. Maggio's testimony was insufficient to prove beyond a reasonable doubt that Rayford was legally insane at the time of shooting. Accordingly, the State presented insufficient evidence to support the conviction, and Rayford is entitled to have his conviction and sentenced reversed and rendered.

## **II. THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.**

In reviewing a challenge to the weight of the evidence, This Court may disturb a jury verdict "when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice." *Bush v. State*, 895 So. 2d 836, 844 (Miss. 2005). The evidence is viewed in the light most favorable to the verdict. *Id.* (citing *Herring v. State*, 691 So. 2d 948, 957 (Miss.1997)). This Court "sits as a hypothetical thirteenth juror." *Lamar v. State*, 983 So. 2d 364, 367 (¶5) (Miss. Ct. App. 2008) (citing *Bush*, 895 So. 2d at 844 (¶18)). "If, in this position, the Court disagrees with the verdict of the jury, 'the proper remedy is to grant a new trial.'"

*Id.*

Should this Court not find that the evidence was insufficient to support the verdict in the issue above, Rayford contends that the verdict was against the overwhelming weight of the evidence for the same reasons stated above pertaining to the sufficiency of the evidence. Accordingly, Rayford submits that he is entitled to a new trial.


### **CONCLUSION**

Based on the propositions briefed and the authorities cited above, together with any plain error noticed by the Court which has not been specifically raised, Rayford respectfully submits that the evidence was insufficient to support his conviction and sentence. Therefore, Rayford requests that this Court reverse his conviction and sentence, and render a judgment of acquittal in his favor. Alternatively, Rayford submits that the verdict was against the overwhelming weight of the evidence. Therefore, Rayford requests that this Court reverse the judgment of the trial court and remand this case for a new trial.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:



Hunter N Aikens

COUNSEL FOR APPELLANT

## CERTIFICATE OF SERVICE

I, Hunter N Aikens, Counsel for Carl Edward Rayford, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

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This the 26<sup>th</sup> day of January, 2010.



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