

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

LISA SANDLIN

APPELLANT

VS.

NO. 2011-CA-0098

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE ISSUES

- I. The evidence at the hearing in this cause clearly supported and charge of murder and there was not credible evidence to support a lesser included charge of manslaughter.**
- II. Applying the criteria set out *Lee v. Lawson*, 375 So.2d 1019 (Miss.1979), the trial court was well within its discretion to deny bail to Lisa Sandlin.**

STATEMENT OF THE CASE

On September 22, 2010, Plaintiff Lisa Sandlin was arrested for the murder of Kirk Sandlin. Bond was set at \$250,000.00. Sandlin filed a Petition for Writ of Habeas Corpus in the Circuit Court of Lee County, Mississippi. A hearing was held on Sandlin's Petition. The \$250,000.00 bond was revoked and bond was denied. (Tr. 90-92) Sandlin filed a Notice of Emergency Appeal to the Supreme Court of Mississippi Pursuant to § 29 of the Mississippi Constitution and the instant appeal ensued. (C.P. 14)

SUMMARY OF THE FACTS

At the hearing on Lisa Sandlin's Petition for Writ of Habeas Corpus, Sheriff Jimmy Johnson testified that his office began its investigation into the death of Kirk Sandlin on September 22, 2010. On that date Johnson was called to the scene along with three investigators and found that Kirk Sandlin had been fatally shot and killed. Based on interviews of witnesses at the scene, Lisa Sandlin was taken into custody and immediately mirandized. Lisa Sandlin was voluntarily questioned and stated, "I shot the motherfucker. I was tired of his shit." Sheriff Johnson testified that there were two eyewitnesses to the shooting. He further testified that based on the statements of eyewitnesses and the evidence gathered at the scene there was no evidence that the shooting occurred in self-defense. (Tr. 8)

After her Miranda rights were read and she waived them, Sandlin admitted to Investigator Gaddy that she was the one who had a gun in her hand and fired the gun that killed Kirk Sandlin. Lisa Sandlin stated that she was tired of the victim. She was tired of arguing and killed him. (Tr. 8) This statement was made right after the incident took place. She was then held at the sheriff's department overnight. Her Miranda rights were read again the next morning and Sandlin repeated the same statement that she was the one who was responsible for Kirk Sandlin's death and that she meant to kill him. (Tr. 9)

Lisa Sandlin's husband, Sammy Sandlin, told investigators that Lisa Sandlin and Kirk Sandlin both stayed at the residence from time to time. It was very common for them all to be there. A verbal altercation took place. The verbal arguing got to a point that Sammy Sandlin told Lisa Sandlin to go inside and shut up, which she did. However, shortly thereafter, Ms. Sandlin returned, coming through the breeze way with a single shot .410 caliber shotgun. She

pointed it directly through the door, just outside the door where Kirk Sandlin was there in the breeze way, stuck it in his belly and pulled the trigger, killing him. (Tr. 9) There was no indication that there was any threat of bodily harm to Ms. Sandlin or a that there was a domestic situation that would warrant a fatal threat to Kirk Sandlin.

Johnson testified that Lisa Sandlin was not a Mississippi resident, that she was from Kansas. He testified that Lisa Sandlin was a potential flight risk. Johnson testified that Sandlin did not have anywhere to go in the area and that her family members were afraid of her. Johnson testified that a bond of anything less than \$250,000.00 would be inadequate to secure Ms. Sandlin's presence for trial. (Tr. 13) Johnson testified that to his knowledge Ms. Sandlin had no prior criminal record.

Lieutenant Investigator Scotty Reed testified that on September 22 of 2010, he was called to the Sandlin home. On that date the defendant, Lisa Sandlin, Kirk Sandlin, Sammy Sandlin and Mary Sandlin were all at Sammy and Lisa's residence. There were outside burning some items around a little campfire. A verbal altercation between Lisa and Kirk ensued. Lisa went inside the house and returned outside with a .410 single shot shotgun. When she raised the gun, the victim, Kirk Sandlin, said, "What are you going to do? Shoot me?" At that point Lisa Sandlin shot and killed Kirk Sandlin. Kirk Sandlin was not armed and there was no evidence that he was out of control or dangerous. There was no evidence that Lisa Sandlin acted in self defense. (Tr. 26-27)

Lieutenant Reed testified that he consider Lisa Sandlin to be a flight risk since she has no ties to the Mississippi and her family lives in a distant state. (Tr. 27) Reed testified that murder carries a life sentence and based on the evidence this was a homicide. Reed testified that Lisa

Sandlin admitted the facts of the shooting to Lieutenant Reed on two separate occasions. (Tr. 28) Reed testified that a bond of anything less than \$250,000 would be inadequate to assure Lisa Sandlin's attendance at trial. (Tr. 28)

Betty Sandlin testified that Kirk Sandlin was her son. Ms. Sandlin testified that she received a phone call from 911 saying that his son had been shot. She went directly to the house when she got the call. She testified that her son told her about Lisa Sandlin, "Mama, you don't know how evil she is." She testified that she was in fear of Lisa Sandlin and that she believed that Lisa Sandlin was a danger to her and to other members of her family. (Tr. 37-38)

Sammy Sandlin testified that he married Lisa Sandlin in November of 1998. Including the time they were dating, the two were together for about 16 years. Mr. Sandlin testified that Kirk Sandlin was behaving normally the night he was killed and did not appear to be under the influence of drugs. (Tr. 44) There was testimony at trial that Kirk had problems with crystal meth and had been in rehab. On the night he died, Kirk came to see Sammy about a job. Sammy testified that the gun Lisa Sandlin used to kill Kirk was his gun that he had acquired to shoot snakes. (Tr. 44) Sammy Sandlin testified that he had filed for divorce and was afraid of Lisa Sandlin. (Tr. 48)

Bail Bondsman Tim Prentiss testified that he operated Accredited Surety and Casualty and had been in the bail bond business since 1992. (Tr. 49) Prentiss testified that he had made inquiries about Lisa Sandlin's family in Kansas and had determined that the family was stable and that her father had a good reputation. (Tr. 53) Prentiss testified that Sandlin's father was willing to execute a deed of trust on his land and a promissory note as collateral on the bond. (Tr. 56) Prentiss testified that he did offer GPS technology to track the location of defendants.

Prentiss testified that he had never written a bond in a murder case and he had not used GPS technology on a person who had a bond with his company. Prentiss testified that he did not know if Lisa Sandlin had anywhere to live in Mississippi if she were to bond out.

Leo Babler, age 80+, testified that he was Lisa Sandlin's father. (Tr. 65) He testified that he lived in Osage City, Kansas, and that his health was good "for my age." Mr. Babler testified that he had about \$18,000.00 available in case, but was willing to put his house up as collateral for a bond. He testified that he understood he would loose his house if Ms. Sandlin fled. He testified that Lisa Sandlin's only other relative in Mississippi was her twenty-one year old son who was a college student. He testified that this was Lisa Sandlin's only tie to Mississippi. He testified that he would allow her to come live with him at his home in Osage, Kansas, until her trial. (Tr. 68) Babler testified that Lisa Sandlin did not have anywhere to stay in Mississippi. (Tr. 69) David Babler, Lisa Sandlin's brother, testified that his father understood the consequences of putting his house up for collateral by way of a mortgage to satisfy the bond. David Babler also testified that he would sign an indemnification form. (Tr. 74) Jesse Huske testified that Lisa Sandlin is his mother. He testified that he had never seen her fire a gun before. He testified that lived in Tupelo, attended Ole Miss on student loans and that there way no viable way his mother could come and live with him. (Tr. 75) Lisa Sandlin testified that she did not have any access to personal property or marital assets in which she believed she had an interest. She testified that if released on bond, she could live in Kansas with her father.

SUMMARY OF THE ARGUMENT

The fixing of bail, whether it be in an amount certain or by recognizance, is left to the sound discretion of the trial judge. His judgment in that regard will not be disturbed unless there is a showing of manifest error or abuse of discretion. *Benson v. State*, 551 So.2d 188 (Miss.1989)(citing, *Lee v. Lawson*, 375 So.2d 1019, 1021 (Miss.1979); *Wells v. State*, 288 So.2d 860 (Miss.1974)). The evidence adduced in the trial court at the hearing on Sandlin's Petition for Habeas Corpus clearly supported the charge of murder. There was no evidence to support a lesser charge of manslaughter.

Article 3, § 29 (1) of the Mississippi Constitution provides in pertinent part that "[e]xcessive bail shall not be required, and all persons shall, before conviction be bailable by sufficient sureties, except for capital offenses (a) when the proof is evident or presumption great." It has long been held that murder falls within a class of cases referred to as capital cases that are not bailable offenses when the proof is evident or presumption of guilt is great. *Blackwell v. Sessums*, 284 So.2d 38 (Miss. 2973) (citing *Hudson v. McAdory*, 268 So.2d 916 (Miss.1972)). Further, where the evidence is in conflict on this question of whether the proof is evident or presumption of guilt is great that the Judge at the habeas corpus hearing is the trier of fact, and, that it is presumed that he has properly applied the law to the facts as found, and his findings will not be set aside or overturned unless, from the evidence, it is manifest to us that he is clearly in error. *Blackwell v. Sessums*, 284 So.2d 38 (Miss. 2973) (citing *Prine v. Polk*, 189 So. 823 (Miss.1939); *Lee v. Hudson*, 165 Miss. 756, 144 So. 240 (1932); *Stokes v. Terrell*, 154 Miss. 230, 122 So. 470 (1929); *Martin v. State*, 97 Miss. 567, 52 So. 258 (1910)). It is clear from the evidence in this record that the trial judge was correct in denying bail to appellant. It is of no

consequence that the prosecution did not argue that the offense was not bailable. As noted earlier, the fixing of bail, whether it be in an amount certain or by recognizance, is left to the sound discretion of the trial judge. His judgment in that regard will not be disturbed unless there is a showing of manifest error or abuse of discretion. *Benson v. State*, 551 So.2d 188

(Miss.1989) The trial court did not err in denying bail to Lisa Sandlin for the where the charge of murder was so clearly shown in the testimony of eye witnesses at the hearing on Sandlin's habeas petition.

ARGUMENT

- I. The evidence at the hearing in this cause clearly supported and charge of murder and there was not credible evidence to support a lesser included charge of manslaughter.**

Based on interviews of witnesses at the scene, Lisa Sandlin was taken into custody and immediately mirandized. Lisa Sandlin was voluntarily questioned and stated, "I shot the motherfucker. I was tired of his shit." Sheriff Johnson testified that there were two eyewitnesses to the shooting. He further testified that based on the statements of eyewitnesses and the evidence gathered at the scene there was no evidence that the shooting occurred in self-defense. (Tr. 8)

After her Miranda rights were read and she waived them, Sandlin admitted to Investigator Gaddy that she was the one who had a gun in her hand and fired the gun that killed Kirk Sandlin. Lisa Sandlin stated that she was tired of the victim. She was tired of arguing and killed him. (Tr. 8) This statement was made right after the incident took place. She was then held at the sheriff's department overnight. Her Miranda rights were read again the next morning and Sandlin repeated the same statement that she was the one who was responsible for Kirk Sandlin's death and that she meant to kill him. (Tr. 9)

Lisa Sandlin's husband, Sammy Sandlin, told investigators that Lisa Sandlin and Kirk Sandlin both stayed at the residence from time to time. It was very common for them all to be there. A verbal altercation took place. The verbal arguing got to a point that Sammy Sandlin told Lisa Sandlin to go inside and shut up, which she did. However, shortly thereafter, Ms. Sandlin returned, coming through the breeze way with a single shot .410 caliber shotgun. She

pointed it directly through the door, just outside the door where Kirk Sandlin was there in the breeze way, stuck it in his belly and pulled the trigger, killing him. (Tr. 9) There was no indication that there was any threat of bodily harm to Ms. Sandlin or a that there was a domestic situation that would warrant a fatal threat to Kirk Sandlin.

Johnson testified that Lisa Sandlin was not a Mississippi resident, that she was from Kansas. He testified that Lisa Sandlin was a potential flight risk. Johnson testified that Sandlin did not have anywhere to go in the area and that her family members were afraid of her. Johnson testified that a bond of anything less than \$250,000.00 would be inadequate to secure Ms. Sandlin's presence for trial. (Tr. 13) Johnson testified that to his knowledge Ms. Sandlin had no prior criminal record.

Lieutenant Investigator Scotty Reed testified that on September 22 of 2010, he was called to the Sandlin home. On that date the defendant, Lisa Sandlin, Kirk Sandlin, Sammy Sandlin and Mary Sandlin were all at Sammy and Lisa's residence. There were outside burning some items around a little campfire. A verbal altercation between Lisa and Kirk ensued. Lisa went inside the house and returned outside with a .410 single shot shotgun. When she raised the gun, the victim, Kirk Sandlin, said, "What are you going to do? Shoot me?" At that point Lisa Sandlin shot and killed Kirk Sandlin. Kirk Sandlin was not armed and there was no evidence that he was out of control or dangerous. There was no evidence that Lisa Sandlin acted in self defense. (Tr. 26-27)

Reed testified that murder carries a life sentence and based on the evidence this was a homicide. Reed testified that Lisa Sandlin admitted the facts of the shooting to Lieutenant Reed on two separate occasions. (Tr. 28)

The only evidence Sandlin adduced to support a lesser charge of manslaughter was that she had called the police twice regarding Kirk Sandlin. However there was no evidence that the victim ever committed any violence against Lisa Sandlin or threatened her in any way. There was testimony adduced that Lisa Sandlin was drunk when she made the calls to police regarding the victim. Further the testimony of the murder was that Lisa Sandlin went into the house and stayed there for some time before returning with a gun to shoot the unarmed victim. Further, both investigators who testified stated that there was no evidence to show that the victim threatened Lisa Sandlin in any way at the time of the murder.

The trial court was within its discretion to find that the “proof was evident that the presumption was great” that Lisa Sandlin murdered her stepson, Kirk. This issue is without merit and the trial court’s denial of bail should be affirmed.

II. Applying the criteria set out *Lee v. Lawson*, 375 So.2d 1019 (Miss.1979), the trial court was well within its discretion to deny bail to Lisa Sandlin.

It is true that “[b]ail is a fundamental, constitutionally protected right.” *Benson v. State*, 551 So.2d 188 (Miss.1989)(citing, *Resolute Insurance Co. v. State*, 233 So.2d 788, 789 (Miss.1970)). Yet “not every person accused of a crime should be released on ... bail. That decision still rests in the sound discretion of the judicial officer.” *Benson v. State*, 551 So.2d 188 (Miss.1989)(citing *Lee v. Lawson*, 375 So.2d 1019, 1024 (Miss.1979)). However fundamental this right to bail is, the fixing of bail, whether it be in an amount certain or by recognizance, is left to the sound discretion of the trial judge. His judgment in that regard will not be disturbed unless there is a showing of manifest error or abuse of discretion. *Benson v. State*, 551 So.2d 188 (Miss.1989)(citing, *Lee v. Lawson*, 375 So.2d 1019, 1021 (Miss.1979);

Wells v. State, 288 So.2d 860 (Miss.1974)).

At the close of the hearing on Lisa Sandlin's Petition for Writ of Habeas Corpus in the trial court, the trial judge, having heard the evidence, that the a murder charge was forthcoming and justified. There was no evidence presented at the hearing that supported a lesser charge of culpable negligence manslaughter or heat of passion manslaughter. The trial court found that the proof was evident and that the presumption was great that there was a murder committed and that Lisa Sandlin did, undoubtedly, commit that murder. The trial court stated its concern with the fact that no condition or combination of conditions would reasonably assure Lisa Sandlin's appearance at trial as required by law. The trial court noted that the evidence was uncontradicted and was stated even by witnesses for the Plaintiff that Lisa Sandlin had no place to live in Mississippi and that the only place she would be able to live if released was Kansas. The trial judge opined that if he were to allow a bond it would be conditioned on the Plaintiff remaining in Mississippi. In light of the testimony at the hearing, Lisa Sandlin had nowhere to live in Mississippi and would have to live in Kansas. The Court held that murder is not a bondable offense and that no condition, including GPS, would guarantee Lisa Sandlin's appearance in court for trial. The trial court revoked the Plaintiff's bond, noting again the court could not allow even a \$250,000.00 bond since Ms. Sandlin had nowhere to stay. (Tr. 91-92)

Article 3, § 29 (1) of the Mississippi Constitution provides in pertinent part that "[e]xcessive bail shall not be required, and all persons shall, before conviction be bailable by sufficient sureties, except for capital offenses (a) when the proof is evident or presumption great." It has long been held that murder falls within a class of cases referred to as capital cases that are not bailable offenses when the proof is evident or presumption of guilt is great. *Blackwell*

v. Sessums, 284 So.2d 38 (Miss. 1973) (citing *Hudson v. McAdory*, 268 So.2d 916 (Miss.1972)).

Further, where the evidence is in conflict on this question of whether the proof is evident or presumption of guilt is great that the Judge at the habeas corpus hearing is the trier of fact, and, that it is presumed that he has properly applied the law to the facts as found, and his findings will not be set aside or overturned unless, from the evidence, it is manifest to us that he is clearly in error. *Blackwell v. Sessums*, 284 So.2d 38 (Miss. 1973) (citing *Prine v. Polk*, 189 So. 823 (Miss.1939); *Lee v. Hudson*, 165 Miss. 756, 144 So. 240 (1932); *Stokes v. Terrell*, 154 Miss. 230, 122 So. 470 (1929); *Martin v. State*, 97 Miss. 567, 52 So. 258 (1910)). It is clear from the evidence in this record that the trial judge was correct in denying bail to appellant. It is of no consequence that the prosecution did not argue that the offense was not bailable. As noted earlier, the fixing of bail, whether it be in an amount certain or by recognizance, is left to the sound discretion of the trial judge. His judgment in that regard will not be disturbed unless there is a showing of manifest error or abuse of discretion. *Benson v. State*, 551 So.2d 188 (Miss.1989) The trial court did not err in denying bail to Lisa Sandlin for the where the charge of murder was so clearly shown in the testimony of eye witnesses at the hearing on Sandlin's habeas petition.

Even if the evidence supported the lesser included offense of manslaughter rather than murder, the trial court was still well within it's discretion to deny bail. In *Lee v. Lawson*, 375 So.2d 1019 (Miss.1979), this Mississippi Supreme Court suggested certain criteria to be applied in determining the amount of bail, if any, that should be required as a prerequisite to a defendant's release while awaiting trial. Those are:

- (1) The length of his residence in the community;

- (2) His employment status and history and his financial condition;
- (3) His family ties and relationships;
- (4) His reputation, character and mental condition;
- (5) His prior criminal record, including any record of prior release on recognizance or on bail;
- (6) The identity of responsible members of the community who would vouch for defendant's reliability;
- (7) The nature of the offense charged and the apparent probability of conviction and the likely sentence, insofar as these factors are relevant to the risk of non-appearance; and
- (8) Any other factors indicating the defendant's ties to the community or bearing on the risk of willful failure to appear. (375 So.2d at 1024).

In the instant case, while Lisa Sandlin had apparently been living in Mississippi during the course of her marriage to Sammy Sandlin, the evidence showed that Sandlin's only tie to Mississippi was her college age son who would be unable to assist her or provide a place for her to live. There was no evidence that Lisa Sandlin was employed in Mississippi or that she had a job that she would lose if she were unable to be released to return to work. Her family ties were in Kansas and not within the jurisdiction of Mississippi where she was being held for murder. Her reputation within the Sandlin family was such that the family was afraid of her and no evidence was adduced regarding her reputation in the community. She had no known criminal history. No members of the community testified to vouch for her reliability. The offense charged was murder and the evidence against Ms. Sandlin included two eye witnesses. There


was no testimony to support self defense or to support a lesser charge of manslaughter. The evidence was that Ms. Sandlin argued with her stepson, Kirk, went in the house, where she stayed for a while and then returned with a .410 caliber single shot shotgun and shot Kirk in the stomach. The evidence showed that Kirk was unarmed and was not threatening in any way. The evidence further showed that Lisa Sandlin was voluntarily questioned and stated, "I shot the motherfucker. I was tired of his shit." The severity of the charge, the likelihood of conviction and the lack of ties of the community, in particular a lack of anywhere to live in Mississippi and the only possible destination of Kansas, all weighed against the likelihood that Ms. Sandlin would appear for her trial in this matter. Applying the criteria set out *Lee v. Lawson*, 375 So.2d 1019 (Miss.1979), the trial court was well within its discretion to deny bail to Lisa Sandlin. The ruling of the trial court should be affirmed.

CONCLUSION

The assignments of error set out by the Appellant are without merit and the trial court's denial of bail should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

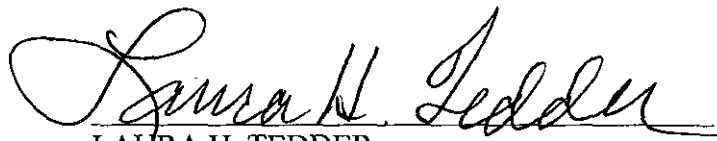
I, Laura H. Tedder, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 4th day of August, 2011.


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