No. 2011-CA-00098

BEFORE THE COURT OF APPEALS OF THE
STATE OF MISSISSIPPI

LISA SANDLIN

Appellant,

v.

THE STATE OF MISSISSIPPI

Appellee.

On Appeal From Lee County Circuit Court
No. CV10-177(P)L

BRIEF OF APPELLANT LISA SANDLIN AND REQUEST FOR EXPEDITED REVIEW OF DENIAL OF BOND

GENE BARTON
Law Office of Gene Barton
102 N. Church St.
P.O. Box 147
Okolona, Mississippi 38860
(662) 447-2522

Attorney for Appellant
Lisa Sandlin

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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 the Supreme Court and/or Judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Lisa Sandlin, Appellant
2. State of Mississippi, Appellee
3. Jim H. Johnson, Sheriff, Lee County Mississippi

DATED, this 1 day of May, 2011.

GENE BARTON
Attorney of Record for
Lisa Sandlin, Appellant
P.O. Box 147
Okolona, Mississippi 38860
Phone: 662-447-2522
Fax: 662-447-2526
Email: gbartonatty@bellsouth.net
Mississippi State Bar Number [redacted]

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STATEMENT OF THE CASE

This case involves a revocation of bond as a result of a hearing on a Petition for Writ of Habeas Corpus filed by Lisa Sandlin, who had been charged in the Justice Court with the crime of murder. Appellant has been held in jail since 2010 without being able to make a bond. A hearing on this Petition was held in the Circuit Court of Lee County before Circuit Judge Jim Pounds. Prior to this, the Justice Court judge had set the bond at Two Hundred Fifty Thousand Dollars ($250,000.00). The State of Mississippi's position, through the sheriff and the district attorney's office, was that the bond of Two Hundred Fifty Thousand Dollars ($250,000.00) was appropriate. The honorable Circuit judge on his own motion revoked the bond and found that the defendant should be held without bond. Subsequently this appeal was filed with the Supreme Court. The appellant Lisa Sandlin has now been indicted, but no bond has still been allowed since Judge Pounds, prior to indictment and under the amendment to the constitution revoked the bond, and the Circuit Court at present time is giving deference to the order of Judge Pounds which order is on appeal.

Earlier, specifically in January, in an effort to get some quick relief after this bond was revoked in January, an Emergency Petition and Motion for Review of Circuit Judge's Decision to Deny Bond was filed very quickly. This petition did not contain any affidavits, it merely stated the facts. The Emergency Petition did not contain the pleadings or the testimony which had not been typed up at that time since the court reporter had not had the opportunity to type and prepare the full record and transcript, which has now been filed with the Supreme Court. Prior to the filing of the Emergency Petition, the Appellant also filed a proper Notice of Appeal with respect to the order of Judge Pounds; which apparently this Court prefers to rule on which considers what evidence Judge Pounds considered in his decision to revoke bond and deny any reduction in bond. This case is now on appeal on the record and testimony had before Judge Pounds and his written order in which he denied bail and the transcript of the hearing upon which he justified his decision.

On January 6, 2011, after hearing testimony of various witnesses, Judge Pounds entered the following order:

> Came on this day for hearing upon Petition of Lisa Sandlin for a bond reduction and the Court, after fully considering the same, and hearing all testimony from both the State and Petitioner, finds as follows:
>
> 1. The present charge in this case is murder, which carries a life sentence;
> 2. The proof is evident and the presumption great;
> 3. No condition or combination of conditions will reasonably assure the appearance of the Petitioner.
>
> THEREFORE, the present bail in the amount of $250,000.00 is hereby revoked and the Petitioner is to be held without bond pending a trial on the merits of this case.
>
> SO ORDERED, THIS THE 6th day of January, 2011.

Lisa Sandlin, Appellant, therefore, with the full transcript before the Court, is asking that the trial judge's order, entered after January 6, 2011, be reversed and bond set after the full Court reviews this request. Since this is a revocation of bond under the amendment to the constitution, she asks for expedited review on emergency basis as the Court now has the full record and transcript.

ISSUES BEFORE THE COURT

ISSUE I: UNDER THE FACTS OF THIS CASE CAN THIS CIRCUIT JUDGE FIND THAT NO REASONABLE JURY COULD FIND ANY OTHER VERDICT OTHER THAN GUILTY OF MURDER?

ISSUE II: IS LISA SANDLIN A DANGER AND IS LISA SANDLIN A FLIGHT RISK?

SUMMARY OF THE ARGUMENT

This case is being thoroughly briefed in that it deals with the significant issue in a non-capital case of when bond is to be allowed and when bond is not to be allowed. This case also deals with the circumstances where, prior to indictment, the district attorney's office does not request revocation of bond and asks that the bond be kept at the same amount. Therefore, a ruling in this case is important in that it deals with the rights of this defendant under the United States Constitution and under the Mississippi Constitution to be released on bail unless she comes within the exception provided for in the Mississippi Constitution. The testimony does not justify the findings by the Circuit Court. The Circuit Judge had no right to revoke the bond when the State of Mississippi made no such request and simply asked that the bond stay at $250,000.00.

In addition, the facts and the testimony so presented do not meet the requirement and do not support a finding by the honorable Circuit Judge as he found in his decision that the "proof is evident and presumption great" and further that "no condition or combination of conditions will reasonably assure the appearance of the Petitioner."

This case, again, is important because this lady is being held in jail without any right of bail although she is presumed innocent and has not been convicted of any crime. There are a few recent cases dealing with §29 of the Mississippi Constitution which allows for revocation of bail and provides procedural guidelines for review. Also at stake are the constitutional provisions under the United States Constitution that provide for bail. The Appellant, Lisa Sandlin, asks that this Court review the transcript of what was testified to and the State's position as indicated clearly in the record of the hearing on the Petition for Writ of Habeas Corpus and after reviewing the same find that the honorable Circuit Judge was in error and that bond should be set in a reasonable amount.

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that I, the undersigned, GENE BARTON, Attorney for the Appellant, Lisa Sandlin, have this date filed a true, correct and exact copy of the above and foregoing Appellant's Summary of the Argument, and on said date served a true, correct and exact copy of said document upon the hereinafter named person, via United States Mail, First Class, postage prepaid, the same being their last known and now existing post office addresses, respectively:

Honorable David L. Daniels
Assistant District Attorney
Office of the District Attorney
P.O. Box 1309
Tupelo, MS 38802-1309
Fax: 662.680.5786

Attorney General Jim Hood
MS Attorney General's Office
P.O. Box 220
Jackson, MS 39205

Hon. Judge Jim S. Pounds
1st Circuit District
P.O. Box 316
Booneville, MS 38829

SO CERTIFIED, this the 2 day of May, 2011.

GENE BARTON, MSB No. 2102
Attorney for Appellant
Lisa Sandlin
P.O. Box 147
Okolona, MS 38860
Phone: 662.447.2522
Fax: 662.447.2526
Email: gbartonatty@bellsouth.net
Website: www.genebarton.net

SUMMARY OF THE FACTS

The hearing on this matter was conducted on January 4, 2011 in the Circuit Court of Lee County, Mississippi. At that time, the courtroom was full of spectators, including family members of the victim who was the adult stepchild of Lisa Sandlin. The transcript reflects that the State of Mississippi, knowing it had the burden of proof, called as witnesses Sheriff Jim Johnson, Investigator Scott Reedy, and Betty Sandlin as their witnesses. The Appellant called as witnesses Sammy Sandlin, Tim Prentiss, bail bondsman, Leo Babler, father of Lisa Sandlin, David Babler, brother of Lisa Sandlin, Jessie Husky, son of Lisa Sandlin, and Lisa Sandlin, at this hearing which took most of an afternoon. There are no procedural issues and the issue boils down to that under the testimony presented, was the proof evident and the presumption great? That is the essence of the question. The Sheriff, himself, testified that he was the supervisor of the investigator and when he arrived at the scene several patrol units were already there and then he arrived with three of his own investigators. He further testified that he took into custody Lisa Sandlin, the Appellant (RE 7). The Sheriff, himself, admitted during questioning that there had been a good bit of verbal arguing (RE 8). Sammy Sandlin that the verbal arguing got to a degree that he told his current wife, Lisa Sandlin, to go inside and shut up. Sheriff Johnson also admitted that he had one hundred fifty-two employees under his supervision and that he basically supervised all of these employees. Sheriff Johnson also admitted under cross-examination that the Sheriff's Department had been dispatched to the particular house before and that it had involved the decedent, Mr. Kirk Sandlin, as well as several other individuals (RE 9). Questions were asked as to whether these calls involved domestic violence and the Sheriff indicated that he did not know the reason why the Sheriff's Department had been called out to the home of Lisa Sandlin where Kirk Sandlin was apparently staying part of the time (RE 10). Sheriff Johnson also testified that Kirk Sandlin did have a reputation for drug use (RE 10) and that he had a reputation for using illegal narcotics (RE 11). Sheriff Johnson also testified in his testimony that the Appellant had no previous criminal history and the only basis for stating that she was a danger was

because of this particular incident which occurred and that she had no prior criminal history (RE 12). Sheriff Johnson also testified that the only way to assure that Mrs. Sandlin appeared in court regardless of GPS technology, regardless of what the amount of the bond was, and regardless of whether or not the bond was supported by collateral, and that her father went on the bond and put up his home as collateral, was to in fact have the bond so high that no one could make the bond or deny bond (RE 13-16).

The State's next witness was Scott Reedy. Mr. Reedy testified that Lisa Sandlin was a flight risk because she had no ties to Mississippi. Also on cross-examination, investigator Reedy was asked about the toxicology report and lab test done at the time of the autopsy of the victim, Kirk Sandlin. The autopsy report indicated that he tested positive for methamphetamines (RE 17).

The mother of the victim, Betty Sandlin, testified basically to the effect that she did not want Lisa Sandlin out on bond and that she was scared of her, but in fact her testimony reflects no basis for such findings (RE 18). Betty Sandlin had no knowledge of what had occurred at the house (RE 19). Furthermore Betty Sandlin, the mother of Kirk Sandlin, did testify that Kirk Sandlin had an addiction problem and that he was addicted to crystal meth and had actually even been in rehabilitation for crystal meth but was suffered from crystal meth addiction (RE 18 & 19). Such statements are consistent with the earlier testimony of the investigator Reedy who confirmed the toxicology report which indicated that he had crystal meth in his system.

Sammy Sandlin, the father of the victim, testified that his son did in fact have an issue with crystal meth (RE 20). Sammy Sandlin also testified that he had never during his entire marriage and relationship with Lisa Sandlin, which was about for sixteen years, ever seen Lisa Sandlin even pick up or hold a gun. Sammy Sandlin also testified that his wife, who at the time this hearing was conducted he had filed a divorce complaint against, had on cross-examination he knew of at least one time called the police out to the house for domestic violence allegations against Kirk Sandlin. He admitted that the allegations were that Lisa Sandlin was being attacked by Kirk Sandlin. The record is uncontradicted from both the testimony of the Sheriff and the victim's

father who was suing for divorce at the time of this hearing that the Sheriff's Department had been called out uncontradicted at least one time maybe more than one time for an allegation of domestic violence by Lisa Sandlin against Kirk Sandlin. Admissions about the pending divorce suit were mentioned (RE 21).

There was then testimony of Tim Prentiss, a bondsman, who testified that he was in good standing to make bonds, he had investigated the circumstances of the family and that he was prepared to make the bond and intended to have the father, who was found to be a stable, reputable man in the community of Osage City, Kansas with a good reputation, to go on the bond and to indemnify and put his own property to secure the bond and to further have GPS technology to know at all times where Lisa Sandlin was (RE 22-29). In other words, the proof presented by the bail bondsman was that he was in good standing with the State, he was in good standing with the Sheriff, he was prepared to make a Fifty Thousand Dollar ($50,000.00) bond of which the father of Lisa Sandlin who lives in Kansas was going to put up his land by way of a Deed of Trust or mortgage as collateral to secure the bond and furthermore that a GPS device was going to be put on Lisa Sandlin which would quickly notify the bonding company and the Sheriff in the event that she left any designated location (RE 22-30).

Leo Babler, the father of Lisa Sandlin, testified that he was eighty (80) years old and lived in the community of Osage City, Kansas and that his health was good and that he was retired from the Air Force and that his liquid assets by of cash were less than Twenty-Five Thousand Dollars ($25,000.00) but that he was prepared to put up his home as collateral to secure the bond and allow his daughter to live with him in his home on GPS technology until this case was heard on the merits (RE 31-34). David Babler was present, along with his wife, to testify and he basically confirmed the testimony regarding the circumstances of his father, Leo Babler, and the fact that he had lived in the same community for approximately since 1972 (RE 35).

The important witness in this case was Jessie Huskey. Jessie Huskey is twenty-one (21) years old and is the son of Lisa Sandlin and he had been raised by Sammy Sandlin, his stepfather, since he would have been approximately five (5) years old. He

testified he was a student at Ole Miss studying history and English. He testified that his sister had moved to Texas to live with her biological father in 2008, but that he had lived with his mother, Lisa Sandlin, and stepfather, Sammy Sandlin, since he was five (5) years old. He further testified that he was aware and knew that his mother had contacted law enforcement before and he knew that the police had been called to the house and come into the house into the kitchen and that he recalled that specifically on one occasion the police had to come out due to an argument between his mother, the appellant Lisa Sandlin, and the victim, Kirk Sandlin, and he specifically remembered them coming out one time (RE 36). He further indicated that his mother had called the police as a result of these accusations of being confronted or being fearful of Kirk Sandlin (RE 36). He further testified that he had had problems with Kirk Sandlin and that Kirk Sandlin had stolen some of his possessions and although they considered themselves good friends and he tried to get along with him because he was Sammy's son in hope that he would not steal anymore of his stuff. He further testified that his sister, who had moved, had wanted to have a deadbolt put on her room for security, and based the need for this on the actions of the victim, Kirk Sandlin, and indicated it was because of the circumstances in the home (RE 36). He further testified that he knew that Kirk Sandlin had problems with crystal meth (RE 37). Furthermore he testified that during his entire life, he had never seen his mother pick up a gun (RE 37).

At the conclusion of the testimony, the State of Mississippi made its argument, which is found on pages 83, 84, and 85 of the transcript. The argument was made that the defendant was a flight risk. Furthermore specifically the State stated "And in this case, under these facts, under this evidence, a $250,000.00 bond is adequate. And as testified to by the officers, they feel that a bond any less than $25,000.00 would be inadequate. For those reasons, we would ask the Court to deny the petition to lower the bond in this case." (RE 39 & 40)

It should be noted that at no time did the State of Mississippi ask that the bond be revoked.

The Court gave a ruling in this case and made a finding of fact that the presumption is great in this case that Mrs. Sandlin did in fact commit a murder and that there were no facts to justify a lesser included offense.

The Eighth Amendment of the Constitution of the United States states "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Of particular significance before the Court is §29 as amended of the Mississippi Constitution which reads as applies in this case as follows:

> Excessive bail shall not be required, and all persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses (a) where the proof is evident or presumption great; or (b) when the person has previously been convicted of a capital offense or any other offense punishable by imprisonment for a maximum of twenty (20) years or more.

Furthermore the provision of the Constitution that is applicable also provides:

> In the case of offenses punishable by imprisonment for a maximum of twenty (20) years of more or by life imprisonment, a county or circuit court judge may deny bail for such offenses when the proof is evident or the presumption great upon making a determination that the release of the person or persons arrested for such offense would constitute a special danger to any other person or to the community or that no condition or combination of conditions will reasonably assure the appearance of the person as required.

Therefore there are two considerations to be considered as to whether or not this is a bailable offense and whether or not the bail should have been reduced. The first issue is under the facts of this case, is the proof evident and the presumption great?

Under the applicable §29 of the Mississippi Constitution and under the case law, bail may only be denied in a murder case where the proof is evident or the presumption great. Other justifications must exist to deny bail unless the proof is evident and the

presumption great that this is a clear case of murder where the proof is evident and the presumption great. In other words, if the Court looking at the facts objectively cannot state that a reasonable jury could find that Lisa Sandlin may have acted in self-defense or in the heat of passion which would have resulted in a manslaughter conviction versus a murder conviction then the Court is in error to find that the proof is evident and the presumption great. There have been several older decisions that have dealt with this issue.

In particular, case styled *Jimmy C. Huff V. Jonathan R. Edwards, Sheriff of Rankin County, Mississippi* was a writ of habeas corpus just as this case was where the individual had not yet been indicted by the grand jury. In this particular case, there was some question as to the participation of Jimmy Huff in the murder. However the basic rules dealing with determination of what it means to be the presumption great or proof evident was discussed in detail. In this particular case, specifically *Jimmy C. Huff V. Jonathan R. Edwards, Sheriff of Rankin County, Mississippi*, 241 So.2d 654 (Miss. 1970), the Court went on to state as follows:

> In a proceeding to obtain bail brought by one who has been indicted by a grand jury for a capital offense, the burden is upon the defendant to show that the proof of his guilt is not evident or the presumption is not great. The indictment creates a prima facie case of legality of detention. *Russell v. Crumpton*, 208 Miss. 43, 44 So.2d 527 (1950); *Ex parte Bridewell*, 57 Miss. 39 (1879); *Street v. State*, 43 Miss. 1 (1870); 8 C.J.S. Bail § 34(3) b (1962); Wharton's Criminal Law and Procedure § 1810 (Anderson's Ed.Supp. 1970). Although the relator has the burden of going forward with the evidence, the judge hearing the case should require the production of all available testimony for the prosecution which justifies the detention, after the relator has offered his evidence. Bridewell v. State, supra. On the other hand, before indictment (as here) the relator is being held on an order of a justice of the peace pending action by the grand jury. In such instances the burden of proof is upon the State, since there is a presumption of innocence and no indictment creating a prima facie case of valid detention. 8 C.J.S. Bail § 34(3) b (1962).

It should be noted this was the factual circumstances that Judge Pounds heard.

In the same base being the *Huff* case, the Court went on to hold:

> In determining whether the proof is evident or the presumption great, the test for release on bail of one charged with a capital offense has been stated in various ways. Generally, if a reasonable doubt or a well-founded doubt of guilt can be entertained, then the proof cannot be said to be evident nor the presumption great. *Ex parte Wray*, 30 Miss. 673 (1856); *Ex parte Bridewell*, 57 Miss. 39 (1879); see G. H. Ethridge, Mississippi Constitutions 148 (1928). The Court has previously referred to 'the liberal policy of our Constitution and laws' to allow applications for bail. *Wooten v. Bethea*, 209 Miss. 374, 47 So.2d 158 (1950).
>
> A reasonable outline of the proper test is summarized in 8 Am.Jur.2d, Bail and Recognizance section 50 (1963), as follows:
>
> Where there is only a 'probability' of guilt, or where, on the whole testimony adduced, the court entertains a reasonable doubt as to whether the prisoner committed the act, or whether, in doing so, he was guilty of a capital crime, bail should be granted.
>
> The word 'evident' is construed to mean manifest, plain, clear, obvious, apparent, and notorious, and unless it plainly, clearly, and obviously appears by the proof that the accused is guilty of a capital crime, bail should be allowed.
>
> Section 34(3) of 8 C.J.S. Bail (1962), contains an analytical statement of the constructional standards:
>
> Thus 'proof evident' or 'evident proof' in this connection has been held to mean clear, strong evidence which leads a well-guarded dispassionate judgment to the conclusion that the offense has been committed as charged, that accused is the guilty agent, and that he will probably be punished capitally if the law is administered. 'Presumption great' exists when the circumstances testified to are such that the inference of guilt naturally to be drawn therefrom is strong, clear, and

convincing to an unbiased judgment and excludes all reasonable probability of any other conclusion.

Particularly in the facts in the *Huff* case, the Supreme Court reversed the finding of the circuit judge denying bond on the murder case. In this case the same result should occur.

For the purposes of this appeal, the appellant Lisa Sandlin would respectfully state that a dispassionate review of the evidence cannot find and meet the findings required as stated in the *Huff V. Edwards* case that the evidence is strong, clear, and convincing and excludes all reasonable probability that Lisa Sandlin will not be convicted of manslaughter instead of murder.

This Supreme Court has held on numerous other occasions that where there is a question as to whether the proof is evident or the presumption is great that bail shall be allowed in murder cases. *Blackwell v. Sessums*, 284 So.2d 38 (Miss. 1973). Furthermore it has been held that if well-founded doubt exists that the crime charged is capital the prisoner should be admitted to bail *Ex parte Wray*, 30 Miss. 673 (1856); *Ex parte Bridewell*, 57 Miss. 39 (1879).

ARGUMENT ISSUE I:

At issue is under the facts of this case can this circuit judge find that no reasonable jury could find any other verdict other than guilty of murder?

Certain Mississippi Code sections are applicable. Mississippi Code §97-3-17 provides HOMICIDE; EXCUSABLE HOMICIDE. THE KILLING OF ANY HUMAN BEING BY THE ACT, PROCUREMENT, OR OMISSION OF ANOTHER SHALL BE EXCUSABLE: (A) WHEN COMMITTED BY ACCIDENT AND MISFORTUNE IN DOING ANY LAWFUL ACT BY LAWFUL MEANS, WITH USUAL AND ORDINARY CAUTION, AND WITHOUT ANY UNLAWFUL INTENT; (B) WHEN COMMITTED BY ACCIDENT AND MISFORTUNE, IN THE HEAT OF PASSION, UPON ANY SUDDEN AND SUFFICIENT PROVOCATION; (C) WHEN COMMITTED UPON ANY SUDDEN COMBAT, WITHOUT UNDUE ADVANTAGE BEING TAKEN, AND WITHOUT ANY DANGEROUS WEAPON BEING USED, AND NOT DONE IN A CRUEL OR UNUSUAL MANNER.

It is well established and provided for by statute in Mississippi Code §97-3-19 that manslaughter is a lesser included offense of murder. The penalty for manslaughter is twenty (20) years and not life and it is not a capital offense. In the facts of this case, where it was uncontradicted that on more than one occasion, the police had been called out to the house on accusations of domestic violence by the victim Kirk Sandlin perpetuated upon the appellant Lisa Sandlin. Furthermore there had been uncontradicted testimony that Kirk Sandlin, the victim, was a crystal meth addict and in fact toxicology reports indicated that he was high on crystal meth at the time of his death, when he was shot by Lisa Sandlin. The proof was also there that individuals of the home were fearful of Kirk Sandlin to the extent they wanted locks placed on their doors with deadbolts and the proof is also uncontradicted that no one had ever seen the Appellant ever in her entire life even pick up a gun. Such facts, uncontradicted at the hearing on the bond reduction, create a jury issue as to whether or not these facts in themselves alone would have, at the very least, been sufficient for the purposes of a

bond hearing to have put a reasonable question in the Court's mind to the point that the Court could not state dispassionately looking at the facts that no jury would come back with any other verdict other than murder.

The Appellant did not put on her defense at the bond hearing, which will be self-defense. She may actually, under all of these facts, be found not guilty. Appellant's counsel would state that he does not believe at a bond hearing most competent criminal lawyers would allow their client to testify or put on full defense. Therefore, the Defense has yet to present its case.

There would have been under the circumstances a jury issue as to whether this was murder or manslaughter *Polk V. State*, 417 So.2d 930 (Miss. 1982). Furthermore under similar facts and circumstances, the courts have ruled that ordinarily whether a homicide is murder or manslaughter is a question for the jury, *Anderson V. State*, 199 Miss. 885, 25 So.2d 474 (Miss. 1946). In another similar case, the Court held that the jury should have wide discretion where quality of act is an issue; verdict for manslaughter upon indictment for murder held authorized by the evidence *Woodward v. State*, 130 Miss. 611, 94 So. 717 (Miss. 1922). There have been other cases that have held that whether killing in quarrel was self-defense was held question for jury Staiger v. State, 110 Miss. 557, 70 So. 690 (Miss. 1915). The Supreme Court reversed a murder conviction where the Court declined to give manslaughter instruction, in that particular case the defendant had requested a lesser included offense of manslaughter. The Court took the case away from the jury and the Court held that taking the evidence in the light most favorable to the defendant the jury could have found the defendant lacked the requisite intent of malice aforethought to assist in the murder but that he did participate in kidnapping the victim. In other words if there is a question of whether or not malice existed, which is an element of murder, then it is a jury issue as to whether or not it is a manslaughter case *Welch v. State*, 566 So.2d 680 (Miss. 1990). Furthermore evidence of previous difficulties between the parties is admissible dealing with the issues of manslaughter versus murder and the issue of malice, see *Hardy v. State*, 143 Miss. 352, 108 So. 727 (Miss. 1926).

It cannot be said under the facts of this case that the argument of heat of passion and lack of malice is specious and the testimony is again uncontradicted with respect to the fact of at least that one or more times the police had been called out for domestic violence issues against the appellant, testimony is uncontradicted that the defendant/appellant and the victim got into an argument, the testimony is uncontradicted that the victim had stolen from the appellant's son, the testimony is uncontradicted that members of the household had felt a need to have deadbolts on their rooms to protect themselves from the victim, Kirk Sandlin, and finally the testimony is uncontradicted that Kirk Sandlin was addicted to crystal meth and was high on crystal meth at the time of his death as reflected by the toxicology.

Manslaughter, by definition, requires the absence of malice. The question of whether or not under these facts and circumstances malice existed would be a question for the jury and if it is a question for the jury to consider then the circuit judge is in error in finding that this is a capital case which gives him the right to deny bond as he so did. A dispassionate judge and this Court sitting dispassionately as the cases have so held and reviewing the record made at the hearing and the record of the testimony at the hearing on the bond can only find one finding and that is that it cannot be stated that a jury will not find Lisa Sandlin guilty of manslaughter. Based on the evidence at the bond hearing, it certainly might be the case that a judge could make a finding based on what he had heard of the testimony that no jury is going to find her not guilty of anything and the judge might have made such a finding which could be sustained by this Court. But to make a finding that no jury will find this lady guilty of manslaughter and that there would not be a jury issue of malice in this case is clearly error on the part of the trial judge and the finding that no bond should be allowed is error and this case should be remanded for a determination as to what a proper bond is under these circumstances. It is also important to consider the statutory wording of Mississippi Code §97-3-35 HOMICIDE; KILLING WITHOUT MALICE IN THE HEAT OF PASSION which is what applies in this case. Specifically the statute says: 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 this particular case, this Supreme Court or Court of Appeals sitting and looking at this case dispassionately and clearly simply looking at the facts that were brought out at the hearing on a bond reduction cannot make a finding that no jury would have been allowed to consider manslaughter and the issue of malice and further that no jury would have made any finding other than murder. In fact most of the cases that deal with manslaughter involve cases where the individual was charged with murder and in fact the jury returned a verdict of manslaughter and an appeal was taken as to whether or not the facts even justified a manslaughter conviction. In addition there was no premeditation.

ARGUMENT ISSUE II:

The other issue before the Circuit Court was whether or not Lisa Sandlin was a danger and whether or not she was a flight risk.

With respect to the issue of a danger, the only evidence offered was the fact that she had been charged with murder. She had no prior criminal record, no record of violence, no record of any past misconduct. To argue that she was a danger, there is absolutely nothing in the record to justify such argument.

With respect to the issue of flight risk, the honorable trial judge and circuit judge basically stated in his ruling that under no circumstances would he allow a defendant to be released on bond who would leave the state of Mississippi. Such ruling is contrary to the law and would mean that if an individual lived in Memphis, Tennessee and committed a murder in Southaven, he could not go out of state. The argument that no reasonable means can be taken to assure the appearance of the defendant in court again is groundless. In all humble due respect to the Honorable Judge, with modern technology, if the offense is bondable, and the individual has no history of flight; with the technology available today and the proof being that a licensed bondsman was going to make a $50,000.00 bond which was going to be secured by a mortgage on the home of her elderly father and furthermore modern technology of GPS was going to hooked to

her leg so if she left the premises of her father's home, the Sheriff and the bondsman would immediately know so. The argument that she could not be kept up with and that there would not be assurances that she would appear in court again is so lacking in merit that it is not even necessary to go into further detail.

CONCLUSION

In conclusion, the Appellant would state at trial that she very well may when she testifies develop a defense of accident or self-defense and in fact she may be acquitted of this crime on the grounds of accident or self-defense. However she did not testify herself as to the details at the bond reduction hearing. The arguments on danger to society and flight risk are so lacking in merit and groundless, that Appellant sees no further need to address those issues. The main issue here is whether or not this Appellant Court, looking at the facts dispassionately, away from Lee County and away from the influences of the local community and the passions of time, can find clear and convincing and unbiased judgment that excludes any reasonable probability that a jury would not find her guilty of manslaughter. It is impossible looking at this case dispassionately from the facts brought out at the bond hearing to state that a jury will not under the facts presented without a defense being put on by the defendant at the very least find her guilty only of manslaughter since there was no malice and no premeditation indicated in the record. Appellant asks that the order of Circuit Judge Jim Pounds be immediately reversed and that this case immediately be remanded to a different Circuit Judge for the purposes of setting a reasonable bond.

Appellant respectfully asks that the full court quickly review this denial of bond. The denial of bond is a significant taking of one's liberty and constitutional rights. Appellant has been in jail for a significant length of time awaiting trial. There are few recent cases, if any, dealing with the amendment to constitution. The constitution provides for Emergency Review. Now the full record is before the court, and Lisa Sandlin asks for expedited review and a bond set. Appellant suggests this issue is significant and deserves review by the entire Supreme Court with respect to this

constitutional provision and a published opinion giving rationale for decision for future guidance to circuit judges.

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that I, the undersigned, GENE BARTON, Attorney for the Appellant, Lisa Sandlin, have this date filed a true, correct and exact copy of the above and foregoing Brief of Appellant, Lisa Sandlin, and on said date served a true, correct and exact copy of said document upon the hereinafter named person, via United States Mail, First Class, postage prepaid, the same being their last known and now existing post office addresses, respectively:

Honorable David L. Daniels
Assistant District Attorney
Office of the District Attorney
P.O. Box 1309
Tupelo, MS 38802-1309
Fax: 662.680.5786

Attorney General Jim Hood
MS Attorney General's Office
P.O. Box 220
Jackson, MS 39205

Hon. Judge Jim S. Pounds
1st Circuit District
P.O. Box 316
Booneville, MS 38829

SO CERTIFIED, this the 7 day of May, 2011.

GENE BARTON