

No. S095223

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
Plaintiff and Respondent,)	
)	(Los Angeles Sup. Ct. A801380)
v.)	.
)	
ROBERT MAURICE BLOOM,)	
)	
Defendant and Appellant.)	

APPELLANT'S SUPPLEMENTAL OPENING BRIEF

Appeal from the Judgment of the Superior Court
of the State of California for the County of Los Angeles

HONORABLE DARLENE SCHEMPP

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XIX

ASSUMING ARGUENDO THAT APPELLANT WAS COMPETENT PRIOR TO AND DURING THE GUILT PHASE, REVERSAL OF THE JUDGMENT IS REQUIRED UNDER *MCCOY V. LOUISIANA*

Appellant made clear in numerous *Marsden*¹ hearings that he objected to defense counsels' intended strategy of conceding that appellant had committed the homicides of his stepmother and stepsister and presenting a mental health defense as to all three homicides, rather than resting without presenting a defense case. If it is determined that appellant was competent prior to and during the guilt phase, the refusal by both the trial court and defense counsel to abide by appellant's wishes in this regard requires reversal of the entire judgment. (*McCoy v. Louisiana* (2018) – U.S. ---, 138 S. Ct. 1500, 200 L. Ed. 2d 821.)

A. Appellant Made A Number of Objections to Defense Counsel's Intention to Concede Guilt of All Three Homicides and To Present a Mental Health Defense.

In an in-camera hearing² relating to a *Faretta*³ motion on January 20, 1999, appellant stated that he wanted the defense to rest without putting on a defense:

I think I have a constitutional right to rest my case without putting on a defense, because it seems to me that the state has to prove me guilty beyond a reasonable doubt and I don't have to prove anything, and I should have the right to rest my case with no defense. That would be the strategy that I wish to pursue.

(RT 145.)

¹ *People v. Marsden* (1970) 2 Cal. 3d 118 [*Marsden*].

² The citations to reporters' transcripts are solely to those portions of the sealed reporters' transcript which were ordered unsealed for purposes of the appeal by an order from this Court dated August 11, 2010.

³ *Faretta v. California* (1975) 422 U.S. 806.

In a *Marsden* hearing on September 11, 2000, appellant stated his objection to the mental health defense which defense counsel intended to present and also made clear his opposition to any concession of guilt as to Counts Two and Three:

...I instructed [defense counsel] that I don't want to put on the psyche [sic] defense, I don't want these doctors being called. [¶] I told her I wanted my defense to be – look, [the prosecution] has two or three eyewitnesses that I shot to death my father. Good riddance to him. I'll admit to that. Good riddance to him. [¶] But [the prosecution] has squat on Josephine and Sandy. She doesn't have a weapon; she doesn't have blood evidence; she doesn't have D.N.A.; she doesn't have fingerprints; she's got no eyewitnesses. I'm not admitting to Josephine, I'm not admitting to Sandy. The only thing I'm admitting to is my father. I got no remorse for it. I'd do it again. Let the jury hear that. [¶] But as to Josephine and Sandy, [the prosecutor] has squat . . .

I'm not asking to go pro per. I want to get that straight. I don't want to go pro per. I don't want to have to fire [defense counsel]. But I think it's clear when the founding fathers put the Sixth Amendment in the Constitution saying you can have counsel or you can represent yourself, I don't think they meant to impose counsel on the defendant and force that defendant to have a defense against the defendant's wishes. [¶] And I want it on record today, July 19th, that I don't want a psyche [sic] defense. I don't want doctors testifying. I don't want state of mind evidence.

...I don't think the doctors should testify as to state of mind. I think we should put on the defense that I killed my father and I didn't do Josie and I didn't do Sandy....

(RT 500-503.)

In another *Marsden* hearing, on September 11, 2000, appellant reiterated that he had never been in agreement with defense counsel in regard to presenting a mental defense. (RT 666-668.)

In a *Marsden* hearing on September 18, 2000, appellant asked the trial court to order defense counsel not to tell the jury in opening statement that appellant is mentally ill. (RT 823.)

In another *Marsden* hearing, on October 5, 2000, appellant expressly stated his objection to defense counsel's plan to concede his guilt of all three homicides at trial:

“[Defense counsel] is going to make an opening statement tomorrow during the guilt phase of my trial and tell the jury that I killed my father, that I killed my stepmother Josephine, and that I killed my little sister Sandy. [¶] [Defense counsel], over my objection and against my express wishes, is going to concede guilt in this case and I find that to be intolerable and outrageous.

Why are we wasting this court's time and the taxpayers' money on the trial if defense counsel is going to throw in the towel and concede guilt? [¶] [Defense counsel] are about to crawl into bed with the prosecution team and hand them their case on a silver platter without so much as a fight.

Why don't I just withdraw my pleas of not guilty and enter pleas of no contest to these criminal charges and we can dispense with the guilt phase. [¶] Why not? I'll tell this court why not. Because I concede nothing.

“I am of sound mind and not mentally ill. I did not kill Josephine and I am not the person who shot my little sister Sandy in the face. [¶] I am legally competent to make intelligent and rational decisions and I choose to contest these criminal charges and damn the consequences.

“[The prosecutors] may or may not be able to prove that I killed my father depending on how the jury interprets the testimony of the prosecution's eyewitnesses to that particular killing and I am going to represent to the court right now that I'm willing to stipulate to the killing in front of [the prosecutors].

“However – – however – – [the prosecutors] don't have a case in regards to the killings of my stepmother Josephine and my little sister Sandy and they most certainly can't meet their burden of proof as to the legal standard of beyond a reasonable doubt.

“I have presented to [defense counsel] several reliable defenses as an alternative to their mental defense and my written and oral proposals have been rejected by defense counsel. Well I reject their mental defense and damn the consequences.

“I have been complaining about Mr. Applebaum [lead defense counsel] and his relentless pursuit of a mental defense since July of 1998, more than two years ago, and I have been complaining about Mrs. Deetz [defense co-counsel] since November of 1998, almost 2 years ago, and all my pleas for help of fallen on deaf ears.

“I tried to fire these people on September 11th in this court and my motion was denied.

“I have a constitutional right, a Sixth Amendment right, to assistance of counsel, and instead of assisting me in contesting these criminal charges, [defense counsel] have fabricated a mental defense and are going to present it to the jury over my objections against my express wishes.

“I submit to this court that I am about to be legally raped by defense counsel during the guilt phase of my trial and the end result is going to be the jury returning with guilty verdicts of first-degree murder against me. I find this whole situation to be intolerable and outrageous.

“I would like to say, in conclusion, that this guilt issue – this strategy issue of who is going to control strategy and whose defense is going to be presented in the jury is a constitutional issue and this court needs to make a choice between defense counsel’s mental defense and my defense of the truth and putting [the prosecutors] to their burden of proof because this is very important to me as to who controls strategy.”

(RT 1930-1934, emphasis added.)

Appellant reiterated his objection during the guilt phase, after Dr. Watson’s testimony (RT 3032-3035) and again after Dr. Mills’ testimony. (RT 3615-3617.)

B. Defense Counsel Conceded to The Jury Appellant’s Guilt of All Three Homicides and Presented Evidence Regarding Appellant’s Mental Health.

During his opening statement to the jury, defense counsel expressly conceded appellant’s guilt of each of the three homicides: “The evidence, ladies and gentlemen, is going to show you that Robert killed his father, he killed Josephine and he killed Sandy.” (RT 1993.) Defense counsel also indicated in the opening statement that the defense would rely on mental health evidence to argue that the homicides amounted to manslaughter, rather than murder. (See, e.g., RT 1993-1995, 2022-2024.)

In the defense case, defense counsel presented lay and expert testimony regarding appellant’s mental impairments and history of abuse suffered at his father’s hand. (See AOB, Statement of Facts, pp. 17-37.)

In closing argument at the guilt phase, defense counsel reiterated the concessions and mental health arguments. (See, e.g., RT 3903, 3989, 3999, 4026-4037.)

C. *McCoy v. Louisiana* Requires Reversal of The Judgment.

Since the filing of appellant's Reply Brief, the Supreme Court of the United States has made it clear, in *McCoy v. Louisiana*, that the Sixth Amendment makes it a criminal defendant's sole prerogative to decide on the objective of the defense, including whether to concede guilt or to rely on the right to put the prosecution to its burden of proving guilt beyond a reasonable doubt:

[A] defendant has the right to insist that counsel refrain from admitting guilt, even when counsel's experienced-based view is that confessing guilt offers the defendant the best chance to avoid the death penalty. Guaranteeing a defendant the right "to have the Assistance of Counsel for his defence," the Sixth Amendment so demands. With individual liberty—and, in capital cases, life—at stake, it is the defendant's prerogative, not counsel's, to decide on the objective of his defense: to admit guilt in the hope of gaining mercy at the sentencing stage, or to maintain his innocence, leaving it to the State to prove his guilt beyond a reasonable doubt.

(*McCoy*, *supra*, 138 S.Ct. at p. 1505.)

Autonomy to decide that the objective of the defense is to assert innocence belongs in this latter category. Just as a defendant may steadfastly refuse to plead guilty in the face of overwhelming evidence against her, or reject the assistance of legal counsel despite the defendant's own inexperience and lack of professional qualifications, so may she insist on maintaining her innocence at the guilt phase of a capital trial. These are not strategic choices about how best to achieve a client's objectives; they are choices about what the client's objectives in fact are.

(*Id.*, at p. 1508.)

"When a client expressly asserts that the objective of '*his* defence' is to maintain innocence of the charged criminal acts, his lawyer must abide by that objective and may not override it by conceding guilt." (*Id.*, at p.

1509 (emphasis in original).) In doing so, the Court explained, counsel violates the client's Sixth Amendment rights. (*Id.* at p. 1505; see also *People v. Amezcua* (2019) 6 Cal.5th 886, 925-926.)

Because such a violation is structural in nature, it is not subject to harmless-error review. (*Id.* at p. 1511.) Reversal of each affected count is thus the constitutionally mandated remedy.

1. Defense Counsels' Concession, Over Appellant's Express Objection, That Appellant Committed The Homicides In Counts Two And Three Requires Reversal Of The Convictions On Those Two Counts Under *McCoy v. Louisiana*.

Appellant made his position, and an objective for his defense to Counts Two and Three, absolutely clear before and during trial: he did not want defense counsel to concede that he had committed the homicides in those two counts. Counsel acted directly in contradiction to that position by conceding to the jury that appellant had committed those two homicides. Those concessions violated appellant's rights as identified by *McCoy v. Louisiana*. Reversal of the convictions on those two counts is therefore required.

2. Defense Counsels' Presentation, Over Appellant's Express Objection, Of A Mental Health Defense To All Three Counts Requires Reversal Of The Convictions On All Three Counts Under *McCoy v. Louisiana*.

Appellant also made his position, and another objective for his defense, absolutely clear before and during trial: he did not want defense counsel to put on a mental health defense, and wanted the defense to rest without putting on a defense, putting the prosecution to its burden of proving his guilt of murder beyond a reasonable doubt.

While appellant stated, in his challenges to defense counsels' intentions to admit the homicides and rely on evidence of mental illness to defend against first degree murder charges, that he was willing to admit to the

prosecutors only that he had killed his father, he was adamantly and steadfastly opposed to any presentation of evidence or argument by defense counsel that he was mentally ill. Appellant consistently denied that he was mentally ill and repeatedly proclaimed that the evidence which defense counsel intended to present in his defense was false and fabricated.

Counsels' refusal to abide by appellant's wishes regarding the presentation of a defense case and acting in direct contravention of appellant's stated direction violated appellant's rights as identified by *McCoy v. Louisiana*. Reversal of the convictions on all three counts is therefore required.

D. Conclusion

Appellant made his position, and the objectives for his defense, absolutely clear before and during trial: he did not want defense counsel to concede that he had committed the homicides in Counts Two and Three; did not want defense counsel to put on a mental health defense; and wanted the defense to rest without putting on a defense, putting the prosecution to its burden of proving his guilt of murder beyond a reasonable doubt.

Defense counsel, against appellant's wishes, conceded that appellant committed the homicides on all three counts, and presented substantial expert testimony regarding appellant's mental health in the defense case.

Under *McCoy v. Louisiana*, defense counsels' concessions and presentation of a mental health defense over appellant's repeated objections violated appellant's Sixth Amendment rights and require reversal of the judgment.

CONCLUSION

For all of the foregoing reasons, and for the reasons stated in Appellant's Opening and Reply Briefs, Bloom's conviction and death judgment must be reversed.

Dated: December 10, 2019

Respectfully submitted,

WILLIAM T. LOWE
Attorney for Appellant Bloom

**CERTIFICATE OF COUNSEL
(CALIFORNIA RULES OF COURT, RULE 8.630(b)(2))**

I, William T. Lowe, am the attorney assigned to represent appellant in this automatic appeal. I conducted a word count of this brief using my office computer software. On the basis of that computer-generated word count, I certify that this brief, excluding tables and certificates, is approximately 2,726 words in length.

DATED: December 10, 2019

WILLIAM T. LOWE

CERTIFICATE OF SERVICE

Re: People v. Robert Maurice Bloom, S.Ct. Case No. Case No. S095223

I, William T. Lowe, declare:

I am over eighteen years of age; am not a party to this action; my business address is P.O. Box 871, El Cerrito, CA 94530; and I certify that on December 18, 2019, I did the following:

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Mr. Robert Maurice Bloom, C 90300
1 EY 10
CSP - San Quentin
San Quentin, CA 94974

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

/S/

William T. Lowe

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

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Case Number: **S095223**

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