

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 REPLY BRIEF**

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

HONORABLE DARLENE SCHEMPP

WILLIAM T. LOWE  
Attorney at Law  
California Bar No. 83668  
P.O. Box 871  
El Cerrito CA 94530  
PH: 510-230-4285  
email: wtlowelaw@gmail.com

Attorney for Appellant Bloom

**TABLE OF CONTENTS**

XIX ASSUMING ARGUENDO THAT APPELLANT WAS  
COMPETENT PRIOR TO AND DURING THE GUILT PHASE,  
REVERSAL OF THE JUDGMENT IS REQUIRED UNDER MCCOY V.  
LOUISIANA ..... 4

A. Respondent Mischaracterizes the Holding of McCoy v. Louisiana ..... 5

B. Respondent Misrepresents The Record Of Appellant’s Objections To  
Counsel’s Intended Concessions And To The Presentation Of A  
Mental Health Defense..... 9

CONCLUSION..... 12

CERTIFICATE OF COUNSEL ..... 13

CERTIFICATE OF SERVICE 14

**TABLE OF AUTHORITIES**

**Page(s)**

**FEDERAL CASES**

*Florida v. Nixon*  
(2004) 543 U.S. 175 ..... 5

*McCoy v. Louisiana*  
(2018) \_\_\_ U.S. \_\_\_ 138 ..... passim

**STATE CASE**

*People v. Flores*  
(2019) 34 Cal.App.5th 270 ..... 8

**TEXT AND OTHER AUTHORITIES**

ABA Model Rule of Professional Conduct 1.2(a) (2016) ..... 7

Hashimoto, Resurrecting Autonomy: The Criminal Defendant's Right to  
Control the Case, 90 B.U.L. Rev. 1147 (2010) ..... 7

**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

---

PEOPLE OF THE STATE OF CALIFORNIA, )  
 )  
 )  
 Plaintiff and Respondent, ) No. S095223  
 )  
 v. ) .  
 )  
 ROBERT MAURICE BLOOM, )  
 )  
 )  
 Defendant and Appellant. )  
 )  
 )

---

**APPELLANT’S SUPPLEMENTAL REPLY BRIEF**

**XIX**

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

In Appellant’s Supplemental Opening Brief, appellant demonstrated that he had unequivocally objected, prior to trial, to any concession by his trial counsel to his having committed the homicides in Counts Two and Three, as well as to the presentation of any mental health defense by defense counsel to any of the three counts against him. Nevertheless, trial counsel did concede to the jury that appellant had killed the victims in Counts Two and Three, and did present a mental health defense to all three counts. Appellant demonstrated that this violated *McCoy v. Louisiana* (2018) – U.S. ---, 138 S. Ct. 1500, 200 L. Ed. 2d 821, and that reversal was therefore required.

Respondent has, through misrepresentation of the record and mischaracterization of the holding of *McCoy*, argued that no *McCoy*

violation occurred, and reversal is therefore not required. A plain reading of the record and of *McCoy* mandates rejection of respondent's arguments and reversal of the judgment in this case.

**A. Respondent Mischaracterizes the Holding of *McCoy v. Louisiana*.**

Respondent's primary argument appears to be that "*McCoy* does not support reversal on the facts of this case because appellant did not unequivocally insist that he was innocent of the killings, a prerequisite for relief under *McCoy*." (RSB<sup>1</sup> p. 5; see also RSB p. 7: "As *McCoy* reaffirms, in the absence of an unambiguous assertion of factual innocence, counsel's decisions about trial strategy are reviewed under the normal *Strickland* standard.") However, nothing in *McCoy* states, or even hints at, such a prerequisite for relief. None of the cases which respondent cites apply, or even discuss, the asserted limitation of *McCoy* to "unambiguous assertions of factual innocence."

What *McCoy* does require for relief is an unequivocal but unsuccessful *objection* to defense counsel's intent to act contrary to a defendant's personal objective for his defense. It was on that basis that the Supreme Court distinguished the facts of *McCoy* from those in *Florida v. Nixon* (2004) 543 U.S. 175. (See 138 S.Ct. at pp. 1505, 1509-1510.)

Respondent attempts to turn *McCoy's* requirement of an unequivocal objection into a requirement of an unequivocal insistence by defendant that he is innocent through a distortion of the discussion of a defendant

---

<sup>1</sup> References to prior briefing is as follows: AOB (Appellant's Opening Brief); RB (Respondent's Brief); ARB (Appellant's Reply Brief); ASOB (Appellant's Supplemental Opening Brief); RSB (Respondent's Supplemental Brief).

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.

“maintaining innocence.” The meaning of “maintaining one’s innocence” for purposes of *McCoy* is properly understood in relation to the alternative at issue in that case – a concession that the defendant killed the victims. It does not require some freestanding claim of factual innocence acceptable to the prosecution.

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.

(*McCoy* at 1508-1509.)

Maintaining innocence in this context means maintaining innocence at the guilt phase versus conceding guilt. No reasonable reading of *McCoy* suggests that it means an unequivocal insistence on factual innocence. In fact various points in *McCoy* indicate to the contrary. Among the decisions in a criminal case which *McCoy* identifies as “reserved for the client” are “whether to plead guilty, waive the right to a jury trial, testify in one's own behalf, and forgo an appeal.” (*McCoy* at p. 1508.) None of those decisions requires an unequivocal insistence upon factual innocence.

*McCoy* did not concern itself solely with a defendant’s personal belief in his own innocence, but explicitly recognized other concerns which may legitimately underly a defendant’s decision to maintain innocence at the guilt phase of a capital trial even where tactically a concession that he committed the homicides may be advantageous.

Counsel may reasonably assess a concession of guilt as best suited to avoiding the death penalty, as English did in this case. But the client may not share that objective. He may wish to avoid, above all else, the opprobrium that comes with admitting he killed family members. Or he may hold life in prison not worth living and prefer to risk death for any hope, however small, of exoneration. See Tr. of Oral

Arg. 21–22 (it is for the defendant to make the value judgment whether "to take a minuscule chance of not being convicted and spending a life in ... prison"); Hashimoto, Resurrecting Autonomy: The Criminal Defendant's Right to Control the Case, 90 B.U.L. Rev. 1147, 1178 (2010) (for some defendants, "the possibility of an acquittal, even if remote, may be more valuable than the difference between a life and a death sentence"); cf. *Jae Lee v. United States*, 582 U.S. —, —, 137 S.Ct. 1958, 1969, 198 L.Ed.2d 476 (2017) (recognizing that a defendant might reject a plea and prefer "taking a chance at trial" despite "[a]lmost certai[n]" conviction (emphasis deleted)). 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. U.S. Const. Amdt. 6 (emphasis added); see ABA Model Rule of Professional Conduct 1.2(a) (2016) (a "lawyer shall abide by a client's decisions concerning the objectives of the representation").

(*McCoy* at pp. 1508-1509.) Nothing in that discussion suggests that the defendant's control over the objectives of the representation requires an unequivocal assertion of factual innocence. Rather, the choices made, e.g., to plead not guilty, or to contest whether the defendant committed the homicide in question, present the issues decided in *McCoy* where factual innocence appears contrary to the evidence and the source of the defendant's objective in the case arises from other considerations.

Moreover, appellant made a plain statement of factual innocence in the process of his objection to defense counsels' intended concessions and mental health defense: "I did not kill Josephine and I am not the person who shot my little sister Sandy in the face." (RT 1931.). That at other points he made admissions which potentially undercut his claim of factual innocence does not change that.

Respondent doesn't present any method of evaluating a claim of innocence in this context and doesn't identify any portion of *McCoy* which discusses any such method of evaluation. Nor could respondent do so, for *McCoy* does not rely on any such evaluation. Rather, what *McCoy*

identified as the relevant factor was whether the defendant unequivocally objected to the concession at issue. Appellant did unambiguously object here. *McCoy* requires reversal.

*People v. Flores* (2019) 34 Cal.App.5th 270 discusses the defendant's objections to factual concessions as the defendant's intent to maintain his innocence at trial, but the context makes it clear that the defendant was not intent on an unequivocal assertion of factual innocence, but on rejecting the concessions that defense counsel made to the jury. (Compare to objections found to state a *McCoy* violation in *Flores, supra*, at p. 280: ("Flores said his counsel is "trying to make me admit to something that I don't want to admit to." "[Defense counsel] is ... saying that I'm driving. And I don't want none of that." "[H]e is saying that I should say that I was the one driving" Defense counsel "are trying to make me admit to guilt." Later, Flores again repeated: "He (defense counsel) is not assisting me correctly. He has admitted to some things that I told him not [to].")

In *Flores*, an argument similar to that made by respondent here was rejected:

Second, the People "presume[ ]" that Flores's objective was an acquittal, not maintaining innocence of the alleged acts. They argue that Flores "may have disagreed on certain factual concessions his counsel wanted to strategically make, but he never suggested an alternative defense or demonstrated the concessions were in direct conflict with his objective." To make such an argument, however, one must ignore all of Flores's repeated, specific objections. The argument also disregards *McCoy*'s discussion of plausible objectives that a defendant might have at trial, among others the avoidance of the "opprobrium that comes with admitting [one] killed family members."

(34 Cal.App.5th at p. 282.) Respondent similarly ignores appellant's repeated objections in this case.



## **B. Respondent Misrepresents The Record Of Appellant's Objections To Counsel's Intended Concessions And To The Presentation Of A Mental Health Defense.**

As with the misrepresentation of the relevant principles of *McCoy*, respondent misrepresents the relevant record, arguing that it shows only that appellant objected to the mental health defense. (See, e.g., RSB pp. 7-8.) Respondent's argument that appellant and counsel were only arguing about strategic decisions concerning what defense to present oversimplifies the issues raised by appellant in his various objections to counsels' intended defenses and ignores three basic points appellant made: 1) he explicitly and unequivocally objected to defense counsel conceding that he had killed his stepmother and stepsister; 2) he explicitly stated he wanted no defense presented, and the prosecution put to their burden of proof beyond a reasonable doubt, and 3) he explicitly and unequivocally objected to the mental health defense which defense counsel intended to present which he claimed was a "trick" and "fabricated." (See RT 1930-1931, 1933.) These are not mere disagreements over strategy, but disagreements over the fundamental objectives of appellant's defense, as that concept is discussed in *McCoy*.

Respondent also misrepresents appellant's objections as directed only to the strategy of presenting a mental defense. This mischaracterization is belied by a plain reading of the record, as quoted in appellant's supplemental opening brief. (see ASOB pp. 2-5.) Without simply reiterating what is presented there, the following makes a basic thrust of appellant's objection clear:

[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.** . . . [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.

(RT 1930-1931 (emphasis added).)

Similarly, appellant stated,

"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.)

Neither of these quotes is addressed to the mental health defense.

The first is addressed directly to counsel's intention to concede. The second is a statement of appellant's objective in the case, to rest the case with no defense and put the state to its burden of proof.

Appellant does not disagree that he also unambiguously objected to the mental health defense, which he considered fraudulent. However, those objections were not separate from, but part of the objectives he had for his defense. Taken as a whole, appellant's objections were unambiguous in setting out the objective of his defense, i.e., to contest the sufficiency of the evidence to prove beyond a reasonable doubt that he had killed his stepmother and stepsister, without presenting the mental health evidence which he considered fraudulent. His aim was to prevent counsel from conceding that he killed his stepmother and stepsister and to prevent

counsel from presenting evidence and argument to establish that he was mentally ill.

In a footnote, respondent suggests, but does not actually claim that by objecting to the mental health defense at the guilt phase, appellant is somehow trifling with the courts because his first trial was reversed for ineffective assistance of counsel for failure to investigate, develop and present mental health evidence. (RSB At p. 10, fn. 5) Somehow, in making this argument, respondent overlooks the fact that in this case, appellant personally entered a plea of not guilty by reason of insanity, and a sanity phase took place at which the jury was unable to reach a unanimous verdict regarding Counts Two and Three. That he then withdrew his NGI plea over the objections of defense counsel is evidence of his lack of rational understanding of the case, not trifling with the courts. (See AOB, ARB Args III, IV.)

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, Reply and Supplemental Opening Briefs, appellant's conviction and death judgment must be reversed.

Dated: March 10, 2020

Respectfully submitted,

/s/

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 2,433 words in length.

DATED: March 10, 2020

\_\_\_\_\_  
/s/  
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 March 10, 2020, I did the following:

1. I served a true copy of the attached Appellant's Supplemental Reply Brief, by mailing it via United States Postal Service in a sealed envelope, postage prepaid, and addressed to the following individual:

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**

**STATE OF CALIFORNIA**  
Supreme Court of California

Case Name: **PEOPLE v. BLOOM (ROBERT MAURICE)**

Case Number: **S095223**

Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **wtlowlaw@gmail.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
SUPPLEMENTAL BRIEF	Bloom supplemental reply brief

Service Recipients:

Person Served	Email Address	Type	Date / Time
William Lowe Attorney at Law 83668	wtlowlaw@gmail.com	e-Serve	3/10/2020 2:47:42 PM
Michael Johnsen Office of the Attorney General 210740	michael.johnsen@doj.ca.gov	e-Serve	3/10/2020 2:47:42 PM
Scott Taryle Office of the Attorney General	docketinglaawt@doj.ca.gov	e-Serve	3/10/2020 2:47:42 PM
Habeas Habeas Corpus Resource Center Fred Renfro, Staff Attorney	docketing@hrcr.ca.gov	e-Serve	3/10/2020 2:47:42 PM
William Lowe Attorney at Law	wtlowe@gmail.com	e-Serve	3/10/2020 2:47:42 PM
Neoma Kenwood California Appellate Project 101805	NKenwood@capsf.org	e-Serve	3/10/2020 2:47:42 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

3/10/2020

Date

/s/William Lowe

Signature

Lowe, William (83668)

Last Name, First Name (PNum)

William T. Lowe

Law Firm

---