

COPY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

KEITH JOHNSON

APPELLANT

VS.

NO. 2007-KA-01687-COA

STATE OF MISSISSIPPI

APPELLEE

FILED

JUL 08 2008

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

REPLY BRIEF OF APPELLANT

SIDNEY F. BECK, JR.
ATTORNEY FOR APPELLANT

9128 PIGEON ROOST, STE. F
P.O. DRAWER 1310
OLIVE BRANCH, MS 38654
(662) 895-7555

TABLE OF CONTENTS

TABLE OF CONTENTS	i.
TABLE OF CASES, STATUTES AND OTHER AUTHORITIES	ii.
ARGUMENT	1.
CONCLUSION	3.
CERTIFICATE OF SERVICE	4.

TABLE OF CASES, STATUTES AND OTHER AUTHORITIES

CASES:

Miller v. State, 956 So.2d 221 (MS 2007)

ARGUMENT

PROPOSITIONS I, II, & III.

The State argues that there was credible evidence to support the conviction, however, they in no way refuted the claims of the Appellant in their argument.

While it is true that Shane Johnston was not armed at the time that he was killed, it is without question that he was the aggressor from beginning to end of this altercation. He and two other people, Harold Lance Schrock and William Alexander Parker, came to the house for the admitted purpose of whipping Patrick Forrester. Keith Johnson, the Appellant herein, met them with Patrick and asked them to leave, stating that he wanted no trouble, as set out in Appellant's Brief, and Shane Johnston, the deceased, started the fight, in the process hitting and loosening a tooth of the Appellant.

It is clear from the record that not only did they attack the Appellant, but they attacked Jerry Forrester and attacked Patrick Forrester's little sister, by kicking the sister in the stomach and hitting Jerry Forrester in the nose.

The State made much of the fact that the Appellant was a guest in the house of Jerry Forrester. No where does the Supreme Court of Mississippi state, nor is there any statute that says that you must be a member of a household in order to defend it. The Appellant had moved in with them, had been there for a week, and was defending a younger cousin and his home. It is uncontroverted that the deceased had said that he was a soldier, was not afraid, and was going in the house to get Patrick Forrester and kill him. The question of whether there is danger to one's home or to himself must be judged in the eyes of the accused. If it appeared to the Appellant that there was an imminent, clear and present danger to himself, or members of the household where he was living, then he was justified in using such force as was necessary to defend himself or the home.

In Miller v. State, 956 So.2d 221 (MS 2007), the Court states,

“Lewis testified that James threatened Miller earlier in the day, stating that “she got death around her[;]” and Miller testified that James punched her in the face and was about to stab her with a butcher knife when she stabbed him. “[W]here any doubt exists as to who was the aggressor in an incident which results in the death of a participant or where a defendant claims self-defense, evidence of a deceased’s previous threats and harassments against defendant ... is admissible.” *Day v. State*, 589 So.2d 637, 642 (Miss.1991). The importance of admitting such evidence lies in the fact that it “enables jurors to put themselves in the defendant’s place at the time of the killing and view the situation as it appeared to him.”

It is not incumbent upon the defendant that has defended himself, or his home, or other people, that the danger should be clear and present and imminent in the eyes of everyone, but only in that of that defendant. One cannot force a standard upon a criminal defendant that in no way could be proved by defendant.

It is immaterial whether the deceased has anything in his hands or not in order to prove self-defense or defense of the home, but only that in the eyes and mind of the defendant, was there clear and imminent and present danger. This is cited in all of the cases cited in the Appellant’s Brief, making all of the assertions by the State, as to the different actions and questions of the Appellant, it still boils down to the fact that Shane Johnston, Harold Lance Schrock and William Alexander Parker, came some distance from the house of Mr. Schrock to the Forrester house and started an altercation and refused to leave, all the while yelling and stating that he was going to kill Patrick Forrester. It is without question that this was self-defense, or defense of the home, and even though it may have been risky or dangerous to have a pistol, which certainly it is, the fact remains that a person has a right to defend himself and his home, or loved ones.

CONCLUSION

In the interest of justice, this case should be reversed, and if not rendered, the Appellant should be granted a new trial.

RESPECTFULLY SUBMITTED, this the 8 day of July, 2008.


SIDNEY F. BECK, JR.
BECK LAW FIRM, P.C.

9128 PIGEON ROOST, STE. F
P.O. DRAWER 1310
OLIVE BRANCH, MS 38654
(662) 895-7555

CERTIFICATE OF SERVICE

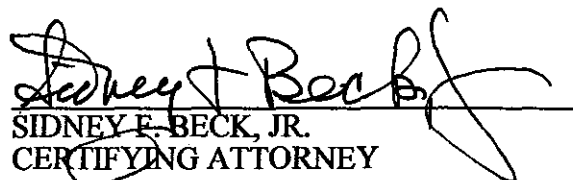
I, Sidney F. Beck, Jr., Attorney at Law, certify that I have this date mailed, postage prepaid,
a true and correct copy of the foregoing Reply Brief Of Appellant to the following:

Honorable W. Glenn Watts
Special Assistant Attorney
Office Of The Attorney General
Post Office Box 220
Jackson, MS 39205-0220

Honorable James Clayton Joyner
Honorable Larry Baker
Assistant District Attorneys
Post Office Box 7237
Tupelo, MS 38802-7237

Honorable Thomas J. Gardner, III.
Circuit Court Judge
Post Office Drawer 1100
Tupelo, MS 38802-1100

This the 8 day of July, 2008.


SIDNEY F. BECK, JR.
CERTIFYING ATTORNEY