IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

MAURICE PRUITT — APPELLANT

VS. — NO. 2008-KA-1405-SCT

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

The focal point in this appeal is the strength and sufficiency of the evidence used to convict Maurice Pruitt of manslaughter in the wake of his indictment for murder after Pruitt killed David McMillan by shooting him three (3) times with a .9 mm handgun.

Pruitt, who testified in his own behalf, claimed he shot McMillan in self-defense after Pruitt, McMillan, and another man, Keitho Plummer, exchanged verbal unpleasantries and McMillan approached Pruitt with his right hand behind his thigh. (R. 350-51, 361-62)

Testimony from others reflected that McMillan was unarmed and attempting to act as a peacemaker between Pruitt and Plummer who were old antagonists.

The jury, in the wake of proper instructions (C.P. at 95, 97, 99), rejected Pruitt's claim of self-defense and found him guilty of manslaughter.

Pruitt claims the evidence was insufficient to support the jury's verdict but, even if not, the verdict of the jury was at least against the overwhelming weight of the evidence.

We submit, on the other hand, the reasonableness of Pruitt's apprehension was a jury issue decided adversely to him in the wake of conflicting testimony and generous jury instructions explaining Pruitt's right to self-defense. *See* jury instructions D-9 and D-10 at C.P. 40-41 attached as appellee' exhibits A and B.

A reasonable, hypothetical juror could have found that Pruitt shot McMillan in a heat of passion, if not with a deliberate design, during an exchange of verbal unpleasantries while McMillan was seeking to defuse an argument between Pruitt and Keitho Plummer. (R. 316-17, 325-26) Although Pruitt claimed he was scared of what McMillan might do, the reasonableness of his apprehension, both during and following the exchange of words, was a question for the jury and not for a reviewing court acting as a limited thirteenth juror.

Affirmation of the guilty verdict returned would not work an unconscionable injustice.

MAURICE PRUITT prosecutes a criminal appeal from the Circuit Court of Jones County, Mississippi, Billy Joe Landrum, Circuit Judge, presiding.

Pruitt is a thirty-four (34) year old African-American male with two years of college. He is a married resident of Laurel and is self-employed as an automobile mechanic (R. 340-41; C.P. at 72, 107)

Pruitt, following a two count indictment returned on September 12, 2007, for murder (Count I) and aggravated assault (Count II), was convicted on April 3, 2008, of manslaughter and acquitted of aggravated assault.

The indictment, omitting its formal parts, alleged in Count I

> "[t]hat **MAURICE PRUITT** . . . on or about the 2nd day of July, 2007, . . . did willfully, unlawfully and feloniously, with the deliberate design to effect the death of David McMillan, did kill and murder David McMillan, a human being, without authority of law and not in necessary self defense, by shooting David McMillan with a gun

. . ."

The indictment charged in Count II that

> " . . . as part of a common plan or scheme or as part of the same transaction or occurrence, [Pruitt] . . . on or about the 2nd day of July, 2007 . . . did purposely, knowingly or feloniously attempt to cause bodily injury to another, Keitho Plummer, with a gun, a deadly weapon, by attempting to shoot Keitho Plummer,
>
> said act[s] constituting the crimes of Murder and Aggravated Assault, and contrary to form of the statute, in violation of Mississippi Code Annotated (1972) Section 97-3-19(1)(a) and 97-3-7(2)(b) . . ." (C.P. at 3)

Following a trial by jury conducted on April 2-3, 2008, the fact finder returned dual verdicts of guilty of manslaughter and not guilty of aggravated assault. (R. 429-30; C.P. at 69-70)

Two (2) issues are raised on appeal to this Court:

"The evidence was insufficient to support the verdict, as the State failed to prove beyond a reasonable doubt that Pruitt did not act in necessary self-defense."

"The verdict was against the overwhelming weight of the evidence which established that Pruitt acted in necessary self-defense." (Brief of the Appellant at ii, 1, 7, and 10)

STATEMENT OF FACTS

Around midnight on July 2, 2007, a shootout took place at closing time at the American Legion hut in Laurel, Mississippi. (R. 344-45) According to Maurice Pruitt, this was not the first time the parking lot of the American Legion hut had become a battle ground involving the same armed combatants. (R. 341-44)

During a habeas corpus hearing conducted eight (8) months prior to trial (R. 2-36), testimony was presented that Pruitt was the father of 26 children by eighteen (18) different mothers and that he had been arrested a number of times for domestic abuse. (R. 17-18, 25) Pruitt was not suppose

to be in possession of a firearm. (R. 7-9, 11-14)

Nevertheless, on the night of July 2, 2007, Pruitt had in his possession a .9 mm handgun which he used to shoot David McMillan three times as McMillan was " . . . coming and he was looking real mean at me." Pruitt testified McMillan was not smiling as he approached and thought McMillan had a gun. (R. 359, 363, 370)

He did not.

Pruitt's version of the shooting of McMillan is found in the following colloquy:

> Q. All right. What happened next?
>
> A. [David McMillan, Keitho, and two other guys] was standing over there still mouthing off. I don't know what they were saying. Mouthing on. David is doing most of the talking, David is. That's who I saw doing most of the talking. And I was looking over there. I kept looking, watching them, seeing what they were doing. And at that time I saw the passenger door of the car. He walk around to the passenger door of the car and opened it up.
>
> Q. Who did?
>
> A. David. David walked around to the passenger door of the car, and he opened the door up. When he opened the door up he reach in the car. He reached down.
>
> Q. You're bending over and reaching out with your right hand?
>
> A. Yeah, he reached into the car. And he stood back up, and he said - - I don't know what he said. He turned around. He said something. I don't know what he said. And David opened the door, the door be like that. David came away from around the car door and came there with his back toward me. And Keitho was standing by the passenger door too. He walked around to the back side of the car.
>
> Q. Back by the wood line there?
>
> A. Yes, trying to get around to the other side of the car or something. I don't know. And when I saw David coming toward him, I like to find Keitho. And by the time he had appeared. A white

Tahoe sitting - -

Q. Put a T for Tahoe. Where was it?

A. Right there. There was a White Tahoe sitting there. So I lost sight of Keitho. And I looked back and David. He was about right there. He was right up on me. And when Tyrone [Pearson] stepped out, David, he come in with his hand behind his thigh.

Q. Which hand?

A. His right hand.

Q. Was he walking fast or slow?

A. Fast.

Q. All right. Could you see his left hand?

A. Yes, it was swinging.

Q. Okay. What happened next?

A. When Tyrone stepped out and tried to stop him, he took his left hand and moved Tyrone out of the way. And that's when I drew my weapon and fired.

Q. How many times did you fire?

A. Three times.

Q. Was there any hesitation between shots.

A. No, there were not I don't know. I started shooting. Before I even got the gun up I was shooting. I started shooting.

Q. What happened next?

A. After I shot - - when I shot David I stepped out from the vehicles, and saw Keitho come away from around the Tahoe.

Q. Around the back of the Tahoe?

A. Yes, sir. And that's when I fired at Keitho.

Q. How many times did you fire? Do you remember?

A. About three or four times.

Q. What, if any, time did you leave the parking lot, the gravel part of the parking lot, when you were firing?

A. When I was firing?

Q. Yes, firing the weapon.

A. I didn't. I stayed in the gravel.

Q. Now what did you do after you fired at Keitho?

A. After I fired at Keitho, that's when I went back and stood behind my truck. That's when I left out the gravel. I went behind my truck. And I heard gunshots.

Q. Wait now. You heard gunshots?

A. Yes.

Q. How many?

A. At least two. At least two gunshots.

Q. Okay.

A. And I jumped. I was standing back there. I had my gun. And when I heard the gunshots, I dropped my gun. I jumped in the truck, and went across the parking lot here. I went across the parking lot. And I had my windows open, so I heard something hitting my truck. (R. 349-52)

During cross-examination the following colloquy took place:

Q. [BY ASSISTANT DISTRICT ATTORNEY:] Well, let's try to clear up a couple of things. Number one, you shot and killed David McMillan on July 2nd, did you not?

A. I shot David McMillan.

Q. And killed him?

A. That's what happened.

Q. Pardon?

A. I guess that's what happened with the gunshot wounds. I guess, yeah.

Q. You guess.

A. I shot him. I shot David.

Q. And after you shot and killed David McMillan, you took the same weapon and fired it at Keitho Plummer, did you not?

A. Yes, sir.

Q. Now when you shot David McMillan, you shot him three times, did you not?

A. I don't know how many times I had shot him. I fired the weapon at him three times.

Q. Pardon?

A. I fired the weapon at him three times. I don't know how many times I shot him because I told you I thought I had shot in the ground.

Q. You thought you shot in the ground?

A. Yes, sir, because I was about nervous. And when I looked and he was there, I was raising my arm up.

Q. Raising your arm up. You saw him fall there in front of you?

A. Yes, sir. He fell after the gunshots.

Q. Correct.

A. He fell after the gunshots.

Q. Did you see the blood coming out of him?

A. No, sir.

Q. Did you see any blood?

A. No, sir.

Q. Well as soon as you shot him, you had the presence of mind to shoot at Keitho Plummer, did you not?

A. After David got shot, after I shot David I, immediately I looked to see where Keitho was. I seen him step out from behind the truck. And that's when I fired at Keitho.

Q. As soon as he stepped out from behind the truck, it's like that?

A. I thought he had a gun.

Q. Just like you thought David had a gun?

A. He had something stuck behind his leg coming at me. Otherwise, it would have been swinging like the other one. He was coming and he was looking real mean at me.

Q. Looking mean at you.

A. He wasn't smiling when he was coming.

Q. So you shot him?

A. He had his hand behind his leg like he had a gun. I believe he had a gun. I didn't see a gun but I believed he had a gun. (R. 362-63)

Pruitt, who admitted he had in his hand a .9 millimeter pistol that night (R. 360-61), testified the clip later fell out of the pistol after he inadvertently mashed the button. (R. 353, 360-61) When Pruitt bent down to retrieve it he heard two gunshots and dropped his pistol in the parking lot where he allegedly abandoned it. (R. 353, 361) Pruitt left the scene in his green Chevrolet Tahoe Suburban (R. 354) - he was driving with a suspended license (R. 345-46) - and the pistol was never found.

The two bullets that killed McMillan were identified as having been fired by a .9 mm handgun. Seven (7) .9 mm shell casings were found at the scene of the shooting along the skirmish

line near a dumpster. (R. 138-40, 145-46, 156-57, 173) The magazine clip found on the ground in close proximity to the shell casings was identified as a .9 mm clip. Pruitt's pistol, which he admittedly used to shoot McMillan, was not recovered.

Melvin Mack, mayor of Laurel, testified that the night of the shooting Maurice Pruitt came to his house during the early morning hours and told Mack he had shot a man. Mayor Mack gave a statement to law enforcement authorities. We quote:

> Q. [BY ASSISTANT DISTRICT ATTORNEY:] What does the last sentence of that statement say that you said under oath?
>
> A. Mr. Pruitt told me that the man he shot did not have a gun. (R. 178) *See also* R. 219.

Based on the above testimony, the jury benevolently acquitted Pruitt of the aggravated assault charge against Keitho Plummer and convicted Pruitt of the lesser offense of manslaughter for killing David McMillan.

As is usually the situation in cases of this nature, David McMillan was unarmed. Not a single witness placed a gun in McMillan's hand at the time he was shot.

Nine (9) witnesses testified on behalf of the State during its case-in-chief, including **Melvin Sanders**, a security officer and ear and eyewitness to the incident.

Sanders observed Pruitt holding a black handgun while arguing with Keitho Plummer. (R. 265, 275) Enter McMillan who was unarmed. (R. 267) Sanders told McMillan not to intervene because Pruitt had a gun, and it was Sanders's job to "keep everything calm." (R. 267)

McMillan pushed Sanders aside and slowly approached Pruitt and Plummer with both hands down by his side. (R. 276) Sanders observed Pruitt shoot McMillan in the chest two or three times. (R. 267) Pruitt then fired three shots toward Sanders. (R. 268-69) "He was shooting at Keitho [Plummer]." (R. 269)

Keitho Plummer described the incident as follows:

> Q.[BY ASSISTANT DISTRICT ATTORNEY:] [Pruitt] was never turned around? He was backing up so he was facing you [Plummer] the whole time?
>
> A. Yes.
>
> Q. Okay.
>
> A. [BY PLUMMER:] So David [McMillan] walked to Maurice Pruitt with his arms open because he already - - well, he walked to him with his arms open.
>
> Q. Did he say anything, as he walked towards Maurice Pruitt with his arms opened, to Maurice Pruitt?
>
> A. He was telling him that he wanted to talk to him. He just wanted to find out what was going - - he was asking him, hey, man, what's going on over there.
>
> Q. What happened then, if anything?
>
> A. Maurice Pruitt pulled out his gun and just started shooting David.
>
> Q. All right. Did you see him pull out a gun?
>
> A. Yes.
>
> Q. Where did he pull out a gun from?
>
> A. From his side. (R. 193)

According to Plummer, who was also unarmed, Pruitt began chasing Plummer and shooting at Plummer repeatedly. (R. 196-97) Plummer sought refuge behind a white Tahoe and eventually " . . . ran out across the parking lot zigzagging trying to get to my vehicle or just get away really." (R. 196)

Fortunately Plummer made it safely to his motor vehicle. (R. 197)

Dr. Steven Hayne, the State's pathologist, conducted the post-mortem examination on David

McMillan. Dr. Hayne testified that two gunshot wounds out of the three entrance wounds produced McMillan's death. (R. 222-23)

Carl Fullilove, a forensic scientist assigned to the firearms and tool mark unit of the Mississippi Crime Laboratory, testified the seven cartridges casings were all .9 millimeter, and all were fired from the same gun. (R. 235) According to Fullilove, "[n]o firearm was ever submitted to have a comparison made between the firearm and these particular cartridge cas[ing]s." (R. 235)

Cynthia Stephens, an innocent bystander, testified that prior to the shooting she observed Pruitt and McMillan arguing with one another. (R. 249-50) McMillan did not have a gun. (R. 251) Stephens thought the argument was over when she heard shots being fired. (R. 251) A bullet struck the white Tahoe in which she and her friend, Andrea Green, were sitting. (R. 249-52)

At the close of the State's case-in-chief, the defendant moved the court for directed verdicts of acquittal of both murder and aggravated assault. (R. 284-85)

Defense counsel opined: "At the very least on Count I the most that they have proven is manslaughter." (R. 284)

Both motions were overruled. (R. 285)

After being advised of his right to testify or not to testify the defendant elected to testify in his own behalf. (R. 340) Pruitt also produced three (3) other witnesses in his defense.

The State produced one witness in rebuttal. (R. 375)

Pruitt's request for peremptory instruction made at the close of all the evidence was denied. (R. 392-93; C.P. at 55)

The jury retired to deliberate at 2:14 p.m. (R. 427) and returned with the following verdicts at 4:10 p.m. :

"We, the jury, find in Count I the defendant, Maurice Pruitt, guilty of

Manslaughter." (R. 429; C.P. at 69)

and

"We, the jury, find in Count II, the defendant, Maurice Pruitt, not guilty of aggravated assault." (R. 430; C.P. at 70)

A poll of the jury reflected both verdicts were unanimous. (R. 429-30)

Sentencing was deferred pending completion of a pre-sentence investigation. (R. 430; C.P. at 71-83)

On May 20, 2008, Pruitt, after apologizing to the Court for taking a man's life, was sentenced to serve twenty (20) years in the custody of the MDOC. (R. 435; C.P. at 105-06)

On May 22, 2008, Pruitt filed a motion for new trial or, in the alternative, for J.N.O.V. (C.P. 103-04) He alleged, *inter alia*, the verdict was against the overwhelming weight of the evidence. (C.P. at 103)

The motion was denied on August 4, 2008. (C.P. at 108)

SUMMARY OF THE ARGUMENT

The evidence was clearly sufficient to sustain a finding by a reasonable, fair-minded, hypothetical juror that Pruitt did not shoot McMillan in self-defense and was guilty of manslaughter, if not murder. *See* Miss.Code Ann. §97-3-35 which reads, in its entirety, as follows:

> "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."

See also **Lanier v. State,** 684 So.2d 93 (Miss. 1996), and jury instruction S-2 which authorized the jury to find the defendant guilty of the lesser included offense of manslaughter if it found from the evidence beyond a reasonable doubt that on July 2, 2007, Maurice Pruitt, in Jones County, Second Judicial District, State of Mississippi,

> ". . . did kill David McMillan, a human being, without malice, in the heat of passion, by the use of a dangerous weapon, without authority of law, and not in necessary self-defense, it is your sworn duty to find the Defendant, Maurice Pruitt, guilty of Manslaughter.
>
> If the State has failed to prove any one or more of these elements beyond a reasonable doubt, then you must find the defendant not guilty." (C.P. at 35-36)

The reasonableness of a defendant's apprehension is a question for the jury, not the reviewing court. "It is for the jury to determine the reasonableness of the ground upon which the defendant acts." **Robinson v. State,** 434 So.2d 206, 207 (Miss. 1983). *See also* jury instructions D-9 and D-10. (C.P. at 40 and 41).

The trial judge did not abuse his judicial discretion in overruling Pruitt's motion for a new trial because the testimony and evidence concerning self-defense placed the question of guilt or innocence squarely in the hands of the jury, and it fails to preponderate heavily, if at all, in Pruitt's favor.

"The jury is the **sole judge** of the weight and credibility of the evidence." **Byrd v. State**, 522 So.2d 756, 760 (Miss. 1988). The evidence in the case at bar, viewed and weighed in the light most favorable to the verdict, does not lead to a conclusion that an unconscionable injustice resulted from Pruitt's conviction of manslaughter.

The testimony and evidence in this case does not preponderate in favor of Pruitt's theory of self-defense. Stated differently, the verdict is not manifestly against the weight of the credible evidence. **Maiben v. State,** 405 So.2d 87, 88 (Miss. 1981).

Allowing a verdict of manslaughter to stand where, as in this case, the defendant admitted shooting the victim three times with a handgun, would not be sanctioning an unconscionable injustice. **Groseclose v. State,** 440 So.297, 300 (Miss. 1983).

ARGUMENT

THE EVIDENCE, VIEWED IN ITS ENTIRETY, WAS LEGALLY SUFFICIENT TO SUSTAIN A CONVICTION OF MANSLAUGHTER.

PRUITT HAS FAILED TO DEMONSTRATE THE TRIAL JUDGE ABUSED HIS JUDICIAL DISCRETION IN OVERRULING HIS MOTION FOR A NEW TRIAL GROUNDED, IN PART, ON A CLAIM THE JURY VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

THE REASONABLENESS OF THE DEFENDANT'S APPREHENSION WAS A QUESTION FOR THE JURY AND NOT FOR THE REVIEWING COURT.

AFFIRMATION OF THE JURY'S VERDICT WOULD NOT SANCTION AN UNCONSCIONABLE INJUSTICE.

Pruitt's explanation for shooting David McMillan is found in the following colloquy taking place during direct examination:

> Q. [BY DEFENSE COUNSEL:] Now after, did you turn yourself in?
>
> A. Yes, sir.
>
> Q. And how did you go about doing that?
>
> A. I went down to Melvin Mack's house and woke him up and told him I had been involved in a shooting at the Hut.
>
> Q. You heard his testimony. What, if anything, else did you tell him that night?
>
> A. I told him that a guy came at me. I said I didn't see the gun but I felt he had a gun.
>
> Q. Did you tell him - - let me ask you this. Why did you shoot David McMillan?
>
> A. Because I saw David reach down in the car. He reached down in the car and he got something. He tucked it behind his leg.

He was walking fast toward me looking mean. Every time I get into it with Keitho it's a gun involved. And I was scared. And I defended myself.

* * * * * *

Q. (Mr. Klein) What, if anything, did you think David McMillan had in his right hand?

A. I thought he had a gun in his right hand. I believed he had a gun.

* * * * * *

Q. How long did you have to react when David McMillan came up on you?

A. It was a split second. Once I looked off from David when he first came toward me, when I looked and saw him coming I looked to find Keitho. And Keitho was running to the right. And when I looked over, when I looked back I saw David. Tyrone had stepped out, and I saw David. It was a split second. And I raised my arm and started shooting. (R. 358-59)

Pruitt assails both the *sufficiency* and the *weight* of the evidence. (Brief of the Appellant at 7-11)

He claims " . . . the evidence was such that no reasonable juror could find beyond a reasonable doubt that Pruitt did not have a reasonable apprehension of an imminent threat of great bodily harm when he shot McMillan." (Brief of the Appellant at 8) Stated differently, Pruitt says no reasonable and fair-minded juror could have found he did not act in self-defense. Pruitt suggests the jury was bound to accept his claim he shot McMillan three times in self defense of his person.

We submit, on the other hand, that reasonable minds could have differed. The evidence, viewed in its entirety, was clearly sufficient for a reasonable, fair-minded, hypothetical juror to find beyond a reasonable doubt that Pruitt did not act in self-defense and was guilty of manslaughter, if not murder.

The jury was generously instructed with respect to the defendant's theory of self-defense. *See* jury instructions D-9 and D-10. (C.P. at 40-41, attached as appellee's exhibits A and B)

Although the defendant's testimony reflected he "was scared" and shot to defend himself, "one does not have the right to kill another merely because he is afraid of him; nor may one kill another because he is afraid that he will receive some bodily harm." **Shinall v. State,** 199 So.2d 251, 259 (Miss. 1967).

One does not have the right to kill another on the first appearance of danger. Rather, there must be a threat or some overt act by the party making the threat or committing the act which would induce a reasonable man to believe there was danger of the threat or act being immediately executed. **Molphus v. State,** 124 Miss. 584, 598, 87 So. 133, 135 (1921).

Whether or not an accused, in a particular case, has measured up to that standard of conduct is a question to be submitted to and decided by the jury. **Rush v. State,** 278 So.2d 456, 459 (Miss. 1973).

In the case at bar, a reasonable, hypothetical juror could have rejected Pruitt's claim of self-defense after assessing the reasonableness of Pruitt's apprehension as well as the imminency of the danger.

Where, as here, the issue presented is the denial of a directed verdict, peremptory instruction, or judgment notwithstanding the verdict, evidence favorable to the defendant must be disregarded. **Stewart v. State,** 986 So.2d 304 (Miss. 2008); **Yates v. State,** 685 So.2d 715, 718 (Miss. 1996). Given this state of affairs, there can be no doubt - not one whit - that Pruitt was not acting in self-defense when he shot McMillan three times. A jury could have found Pruitt was not in imminent danger and used more force than reasonably necessary to repel any contemplated assault.

The jury was properly instructed on the issue of self-defense. *See* jury instructions D-9 and

D-10. (C.P. at 40-41, respectively) Pruitt does not take issue with the jury instructions.

Pruitt testified he was "scared" of McMillan because of the prior altercations he had had with Keitho Plummer. (R. 358-59)

We reiterate.

Pruitt did not have the right to kill or assault McMillan simply because he was afraid of him or afraid he would receive some bodily harm. **Shinall v. State,** *supra*, 199 So.2d 251, 259 (1967). Rather, whether Pruitt was acting in self-defense and whether Pruitt used excessive force in repelling any attack on him, were issues for the jury to resolve. **Hall v. State,** 644 So.2d 1223, 1229-30 (Miss. 1994).

A reasonable and fair-minded juror could have found that Pruitt did not have reasonable grounds to apprehend a design on the part of McMillan to kill Pruitt or do him great bodily harm or that there was imminent danger of such design being accomplished. *See* jury instructions D-9 and D-10 at C.P. 40-41. McMillan, if he was armed at all, was armed only with his mouth.

Admittedly, a defendant is not required to prove he acted in self-defense; rather, if a reasonable doubt of his guilt arises from the evidence, including evidence of self-defense, he must be acquitted. **Smith v. State,** 754 So.2d 1159 (Miss. 2000); **Sloan v. State,** 368 So.2d 228 (Miss. 1979).

In the case at bar, a reasonable, hypothetical juror could have found that McMillan was not an aggressor and that Pruitt's apprehension, under the circumstances, was unreasonable. Stated differently, the evidence presented a jury question as to whether or not the defendant was acting in self-defense when he shot McMillan. **Hall v. State,** *supra*, 644 So.2d 1223 (Miss. 1994); **Johnson v. State,** 723 So.2d 1205 (Ct.App.Miss. 1998).

The jury is the final judge of whether a defendant acted in justifiable self-defense. **Rush v.**

State, 278 So.2d 456, 459 (Miss. 1973); **Yarber v. State**, 230 Miss. 746, 93 So.2d 851, 852 (1957). Put another way, "[i]t is for the jury to determine the reasonableness of the ground upon which the defendant acts." **Robinson v. State**, *supra*, 434 So.2d 206, 207 (Miss. 1983).

In **Yarber v. State**, 230 Miss. 746, 93 So.2d 851, 852 (1957), this Court opined:

> * * * But of course the threat must be reasonably "apparently necessary", since **a party may have an apprehension that his life is in danger and believe the grounds of his apprehension just and reasonable; and yet he acts at his peril, since the jury and not he is the final judge of whether he acted upon reasonable grounds.** Ransom v. State, 1928, 149 Miss. 262, 115 So. 208; Robinson v. State, Miss. 1950, 49 So.2d 413. * * * [emphasis supplied]

And, in **Rush v. State**, 278 So.2d 456, 459 (Miss. 1973), we find this language:

> The apprehension of such danger must be real and such as would or should, under the circumstances, be entertained by a reasonably well-disposed man of average prudence; and **whether the accused has, in a particular case, measured up to that standard of conduct is a question to be submitted to, and decided by, the jury . . .** [emphasis supplied]

Who, other than the jury, could decide fully, fairly, and finally whether Pruitt had " . . . reasonable grounds to apprehend a design on the part of David McMillan to kill him or to do him great personal injury, and [whether] there reasonably appeared to Maurice Pruitt to be imminent danger of such design being accomplished?." *See* jury instruction D-9 at C.P. 40.

It is clear in this case that prior to the shooting there was some arguing and exchange of verbal unpleasantries between Pruitt, Plummer, and McMillan. (Pearson: R. 291-93; T. Mclendon: 316-17; C. McLendon: R. 325-26)

In **Cooley v. State**, 391 So.2d 614, 616-17 (Miss.1980), a homicide case, we find an informative collation of cases succinctly explaining the law of self-defense within the context of the decedent's prior oral threats or threatening gestures and behavior.

Insulting words can never justify a homicide, unless they are of such nature as to cause defendant to believe he is threatened with grave, impending danger.

[*Reed v. State*, 197 So.2d 811, 814 (Miss. 1967)].

Be that as it may, there is no principle of criminal law better settled - none more necessary to the peace of society, and the safety of human life - than that threats, however deliberately made, do not justify the taking the life of the party making them. That is excused when done in the necessary defense of one's own life, or to escape great bodily harm. [T]he law tolerates no justification, and accepts no excuse for the destruction of human life, on the plea of self-defense, except that the death of the adversary was necessary, or apparently so, to save his own life, or his person from great bodily injury, and there shall be imminent danger of such design being accomplished. The danger to life, or of great personal injury, must be imminent, present at the time of the killing, real or apparent, and so urgent that there is no reasonable mode of escape except to take life.

[*Evans v. State*, 44 Miss. 762, 773 (1871)].

It is not true that a party has a right to kill another on the first appearance of danger. The rule is that to defend on alleged threats and apprehension of threats there must be a demonstration by the party making the threat which would induce a reasonable man to believe that there was danger of such threat being immediately executed.

[*Molphus v. State*, 124 Miss. 584, 598, 87 So. 133, 135 (1921)].

The instruction requested by appellant is clearly erroneous. By it the appellant sought to have the court charge the jury that appellant had the right to kill the deceased because he knew deceased had threatened his life. This is not the law. It took more than a threat by deceased against the life of appellant to justify the latter in killing the deceased. There must have been in addition, at the time of the homicide, an overt act on the part of the deceased indicating a purpose to carry out such threat.

[*James v. State*, 139 Miss. 521, 524, 104 So. 301, 302 (1925)].

To make a homicide justifiable on the grounds of self-defense, danger to slayer must be either actual, present, and urgent, or slayer must have reasonable grounds to apprehend design on part of

> deceased to kill him or to do him some great bodily harm, and in addition to this, to apprehend that there was imminent danger of such design being accomplished; mere fear, apprehension, or belief, however sincerely entertained by one person that another designs to take his life or to do him some great bodily harm will not justify former taking life of the latter.
>
> [*Bright v. State*, 349 So.2d 503 (Miss. 1977)].

Sufficiency.

"Requests for a directed verdict and motions JNOV implicate sufficiency of evidence." **Franklin v. State**, 676 So.2d 287, 288 (Miss. 1996). Pruitt is correct when he suggests this Court must review the trial court's finding regarding sufficiency of the evidence at the time the motion for JNOV was overruled. **Holloman v. State**, 656 So.2d 1134, 1142 (Miss. 1995), citing **Wetz v. State**, 503 So.2d 830, 868-68 (Miss. 1987).

"The standard of review for motions for directed verdict and JNOV is abuse of discretion." **Young v. State,** 962 So.2d 110, 116 (Ct.App.Miss. 2007) citing **Smith v. State,** 925 So.2d 825, 830 (¶10) (Miss. 2006) (citing **Brown v. State,** 907 So.2d 336, 339 (¶8) (Miss. 2005)).

No abuse of judicial discretion has been demonstrated here.

In judging the legal sufficiency, as opposed to the weight, of the evidence on a motion for a directed verdict or request for peremptory instruction or motion for judgment notwithstanding the verdict, the trial judge is required to accept as true all of the evidence that is favorable to the State, including all reasonable inferences that may be drawn therefrom, and to *disregard* evidence favorable to the defendant. **Stewart v. State,** *supra*, 986 So.2d 304 (Miss. 2008); **Anderson v. State,** 904 So.2d 973 (Miss. 2004), reh denied; **Lynch v. State,** 877 So.2d 1254 (Miss. 2004), reh denied, cert denied 125 S.Ct. 1299, 543 U.S. 1155, 161 L.Ed.2d 122 (2004); **Hubbard v. State,** 819 So.2d 1192 (Miss. 2001), reh denied; **Yates v. State,** 685 So.2d 715, 718 (Miss. 1996); **Ellis v.**

State, 667 So.2d 599, 612 (Miss. 1995); **Clemons v. State,** 460 So.2d 835 (Miss. 1984); **Forbes v. State,** 437 So.2d 59 (Miss. 1983); **Bullock v. State,** 391 So.2d 601 (Miss. 1980). *See also* **Jones v. State,** 904 So.2d 149, 153-54 (Miss. 2005) ["The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."] *See also* **Stewart v. State,** *supra,* 986 So.2d 304 (Miss. 2008).

If under this standard, sufficient evidence to support the jury's verdict of guilty exists, the motion for a directed verdict and request for peremptory instruction or JNOV should be overruled. **Brown v. State**, 556 So.2d 338 (Miss. 1990); **Davis v. State**, 530 So.2d 694 (Miss. 1988). A finding the evidence is insufficient results in a discharge of the defendant. **May v. State**, 460 So.2d 778, 781 (Miss. 1984).

Judge Waller's opinion in **Bush v. State,** 895 So.2d 836, 843 (¶16) (Miss. 2005), makes it perfectly clear that in resolving sufficiency of the evidence issues the evidence must be viewed and considered in the light most favorable to the State's theory of the case. We quote:

> In *Carr v. State,* 208 So.2d 886, 889 (Miss. 1968), we stated that in considering whether the evidence is sufficient to sustain a conviction in the face of a motion for directed verdict or for judgment notwithstanding the verdict, the critical inquiry is whether the evidence shows "beyond a reasonable doubt that accused committed the act charged, and that he did so under such circumstances that every element of the offense existed; and where the evidence fails to meet this test it is insufficient to support a conviction." **However, this inquiry does not require a court to**
>
> > **'Ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt.' Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the**

crime beyond a reasonable doubt.

> *Jackson v. Virginia,* 443 U.S. 307, 315, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979) (citations omitted) (emphasis in original.) Should the facts and inferences considered in a challenge to the sufficiency of the evidence "point in favor of the defendant on any element of the offense with sufficient force that reasonable men could not have found beyond a reasonable doubt that the defendant was guilty," the proper remedy is for the appellate court to reverse and render. *Edwards v. State,* 469 So.2d 68, 70 (Miss. 1985) (citing *May v. State,* 460 So.2d 778, 781 (Miss. 1984)); *see also Dycus v. State,* 875 So.2d 140, 164 (Miss. 2004). However, if a review of the evidence reveals that it is of such quality and weight that, "having in mind the beyond a reasonable doubt burden of proof standard, reasonable fairminded men in the exercise of impartial judgment might reach different conclusions on every element of the offense," the evidence will be deemed to have been sufficient. *Edwards,* 469 So.2d at 70; *see also Gibby v. State,* 744 So.2d 244, 245 (Miss. 1999).
>
> * * * * * *
>
> In light of these facts, we find that any rational juror could have found beyond a reasonable doubt that all of the elements had been met by the State in proving capital murder with the underlying felony being armed robbery. This issue is without merit. **Bush v. State,** 895 at 843-44 (¶¶16, 17) [emphasis in bold print ours].

Our position on the issue of self-defense can be summarized in only three (3) words: "classic jury issue." A reasonable and fair-minded juror could have rejected Pruitt's claim of self-defense and found beyond a reasonable doubt that all of the elements had been met by the State in proving manslaughter, if not murder.

In short, it was a jury issue, and the jury has spoken.

Weight.

In ruling on a defendant's motion for a new trial, the trial judge - and this Court on appeal as well - again must look at the evidence in the light most favorable to the State's

theory of the case, i.e., "in the light most favorable to the verdict." **Herring v. State,** 691 So.2d 948, 957 (Miss. 1997), citing **Mitchell v. State,** 572 So.2d 865, 867 (Miss. 1990).

"We reverse only for abuse of discretion, and on review we accept as true all evidence favorable to the State." **McClain v. State,** 625 So.2d 774, 781 (Miss. 1993).

In **Bush v. State,** *supra*, 895 So.2d 836, 844 (¶18) (2005), the Supreme Court penned the following language articulating the true rule:

> When reviewing a denial of a motion for a new trial based on an objection to the weight of the evidence, we will only disturb a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice. *Herring v. State,* 691 so.2d 948, 957 (Miss. 1997). We have stated that on a motion for new trial,
>
> > The court sits as a thirteenth juror. The motion, however, is addressed to the discretion of the court, which should be exercised with caution, and the power to grant a new trial should be invoked only in exceptional cases in which the evidence preponderates heavily against the verdict.
>
> *Amiker v. Drugs for Less, Inc,* 796 So.2d 942, 947 (Miss. 2000)/2 However, the evidence should be weighed in the light most favorable to the verdict. *Herring*, 691 So.2d at 957. A reversal on the grounds that the verdict was against the overwhelming weight of the evidence, "unlike a reversal based on insufficient evidence, does not mean that acquittal was the only proper verdict." *McQueen v. State*, 423 So.2d 800, 803 (Miss. 1982). Rather, as the "thirteenth juror" the court simply disagrees with the jury's resolution of the conflicting testimony. *Id.* This difference of opinion does not signify acquittal any more than a disagreement among the jurors themselves. *Id.* Instead, the proper remedy is to grant a new trial./3
>
> Sitting as a limited "thirteenth juror" in this case, we cannot view the evidence in the light most favorable to the verdict and say that an unconscionable injustice resulted from

> this jury's rendering of a guilty verdict. * * * " [text of notes 2 and 3 omitted]

See also **Chambliss v. State,** 919 So.2d 30, 33-34 (¶10) (Miss. 2005), quoting *Bush*, 895 So.2d at 844 (¶18).

The jury's verdict was not against the overwhelming weight of the credible evidence which does not preponderate heavily, if at all, in favor of Pruitt's theory of self-defense.

The jury was sufficiently instructed on the issue of self-defense. *See* jury instructions D-9 and D-10 at C.P. 40-41. As stated previously, Pruitt does not take issue with any of the jury instructions which were granted at his request.

A reasonable and fair-minded hypothetical juror could have found from the testimony and evidence that after an exchange of words and verbal unpleasantries between Pruitt and Plummer, Pruitt shot McMillan as McMillan approached, unarmed, for the purpose of defusing a volatile situation.

A fair-minded juror could have found that Pruitt did not have reasonable grounds to apprehend a design on the part of McMillan to either kill him or do him great bodily harm and, if so, there was imminent danger of such design being accomplished.

Pruitt, contemplating trouble with Plummer, pre-armed himself. A reasonable, fair-minded juror could have found solely from the testimony of Melvin Sanders, a security guard and an ear and eye witness to the shooting, that McMillan was not armed and approached Pruitt and Plummer as a peacemaker, not an aggressor. (R. 266-67)

Regrettably, McMillan must await his reward in heaven.

Once again, our position on this issue can be summarized in only three (3) words: "classic jury issue." A reasonable and fair-minded juror could have found Pruitt guilty of

manslaughter, if not murder.

"[T]he scope of review on this issue is limited in that all evidence must be construed in the light most favorable to the verdict." **Herring v. State**, *supra*, 691 So.2d at 957 citing **Mitchell v. State**, *supra*, 572 So.2d 865, 867 (Miss. 1990). Put another way, " . . . the evidence should be weighed in the light most favorable to the verdict." **Bush v. State,** *supra*, 895 So.2d 836, 844 (¶18) (Miss. 2005).

In **Maiben v. State**, 405 So.2d 87, 88 (Miss. 1981), this Court announced that

> . . . . . we will not set aside a guilty verdict, absent other error, **unless it is clearly a result of prejudice, bias or fraud, or is manifestly against the weight of credible evidence.** [emphasis supplied]

The following observations made in **Groseclose v. State**, 440 So.2d 297, 300 (Miss. 1983), are also worth repeating here:

> We will not order a new trial unless convinced that the verdict is so contrary to the overwhelming weight of the evidence that, to allow it to stand, **would be to sanction an unconscionable injustice.** *Pearson v. State*, 428 So.2d 1361, 1364 (Miss. 1983). Any less stringent rule would denigrate the constitutional power and responsibility of the jury in our criminal justice system. [emphasis supplied]

In short, this Court will not set aside a guilty verdict unless the verdict is manifestly against the weight of credible evidence [**Maiben v. State**, 405 So.2d 87, 88 (Miss. 1981)] and unless this Court is convinced that to allow the verdict to stand, would be to sanction an unconscionable injustice. **Groseclose v. State**, 440 So.2d 297, 300 (Miss.

Contrary to Pruitt's position (Brief of the Appellant at 11), the case at bar does not exist in this posture.

CONCLUSION

There was more than sufficient evidence to support the jury's verdict that Pruitt did not shoot McMillan in self-defense and was guilty of manslaughter. Given the facts found here, any rational juror could have found beyond a reasonable doubt that Pruitt was not acting in self-defense when he thrice shot McMillan with a .9 mm handgun.

Indeed, in our opinion, the question is not even close.

Furthermore, in light of the evidence presented at trial which, we submit, fails to preponderate heavily, if at all, in Pruitt's favor, and giving the State the benefit of all favorable inferences, the verdict was not against the overwhelming weight of the evidence.

"In any jury trial, the jury is the arbiter of the weight and credibility of a witness' testimony, [and] [t]his Court will not set aside a conviction without concluding that the evidence, taken in the most favorable light, could not have supported a reasonable juror's conclusion that the defendant was guilty beyond a reasonable doubt." **Rainer v. State**, 473 So.2d 172, 173 (Miss. 1985).

The case at bar does not exit in this posture.

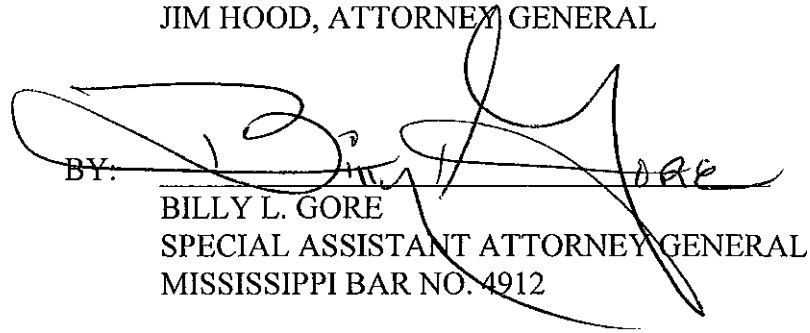
Although Pruitt, with the able and effective assistance of trial counsel, claimed he shot McMillan in self-defense, his claim was rejected by the jury in the wake of generous jury instructions.

Appellee respectfully submits that no reversible error took place during the trial of this

cause and that the judgment of conviction and twenty (20) year sentence imposed by the trial court should be affirmed.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL



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ENTERED

IN THE CIRUCIT COURT OF JONES CONTY, MISSISSIPPI
SECOND JUDICIAL DISTRICT

STATE OF MISSISSIPPI — PLAINTIFF

VERSUS — CAUSE NO. 2007-246-KR2

MAURICE PRUITT

JURY INSTRUCTION

The Court instructs the jury that you are not to judge the actions of Maurice Pruitt in the cool, calm light of after developed facts, but instead you are to judge his actions in the light of circumstances confronting Maurice Pruitt at the time, as you believe from the evidence that those circumstances reasonably appeared to him on that occasion. And if you believe, from the evidence in this case, it appeared to Maurice Puritt that he had reasonable grounds to apprehend a design on the part of David McMillan to kill him or to do him great personal injury, and there reasonably appeared to Maurice Pruitt to be imminent danger of such design being accomplished, then he was justified in anticipating an attack by David McMillan.

Further, if you believe from the evidence that David McMillan died as a result of the discharge of a pistol which was, at the time of the fatal shot, in possession of Maurice Puritt and that the fatal shot was fired at a time when Maurice Pruitt was lawfully acting in his self-defense, then you must find Maurice Pruitt not guilty of murder.

EXHIBIT tabbies A

FILED

APR 03 2008

BART GAVIN
CIRCUIT CLERK
JONES COUNTY, MS

D-9

ENTERED

IN THE CIRUCIT COURT OF JONES CONTY, MISSISSIPPI
SECOND JUDICIAL DISTRICT

STATE OF MISSISSIPPI — PLAINTIFF

VERSUS — CAUSE NO. 2007-246-KR2

MAURICE PRUITT

JURY INSTRUCTION

The Court instructs the Jury that the law authorizes action on a reasonable appearance of danger, either real or apparent, and the Defendant is entitled to the benefit of appearances as presented to him and reasonably acted upon. The Court further instructs the Jury that the term "apparent danger" means such overt demonstration , by conduct of acts, of a design to take life or so some great personal injury, as would make the killing of David McMillan reasonable to escape great bodily harm or death and that in order to establish the homicide was committed in self-defense, it is not essential that the Defendant show that the deceased actually had a deadly weapon; it is sufficient that he show that the conduct of the deceased was such as to cause a reasonable person under similar circumstances to reasonably believe the killing was necessary to prevent the deceased from then and there killing the Defendant or doing him great bodily harm.

D-10

EXHIBIT
tabbies

FILED
APR 03 2008
BART GAVIN
CIRCUIT CLERK
JONES COUNTY, MS

CERTIFICATE OF SERVICE

I, Billy L. Gore, 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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Post Office Box 685
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Honorable Anthony Buckley
District Attorney, District 18
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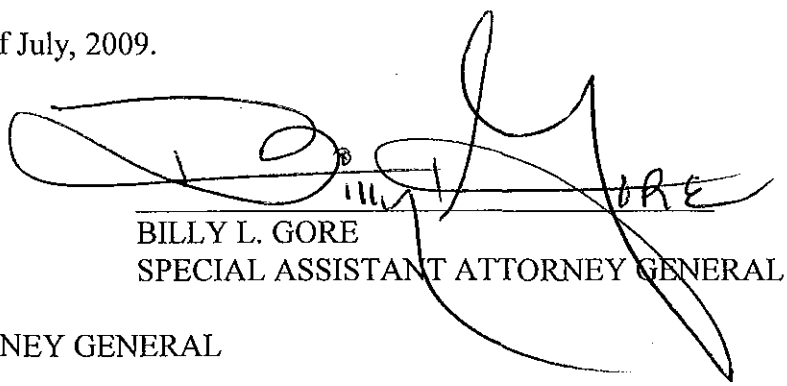
This the 16th day of July, 2009.



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