

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

MAURICE PRUITT

APPELLANT

V.

NO. 2008-KA-1405-SCT

STATE OF MISSISSIPPI

APPELLEE

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 this court may evaluate possible disqualifications or recusal.

1. State of Mississippi
2. Maurice Pruitt, Appellant
3. Honorable Anthony J. Buckley, District Attorney
4. Honorable Billy Joe Landrum, Circuit Court Judge

This the 20 day of May, 2009.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:


Benjamin A. Suber
COUNSEL FOR APPELLANT

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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

MAURICE PRUITT

APPELLANT

V.

NO. 2008-KA-01405-SCT

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF THE APPELLANT

STATEMENT OF THE ISSUES

ISSUE NO. 1

**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.**

ISSUE NO. 2

**THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT
OF THE EVIDENCE, WHICH ESTABLISHES THAT PRUITT ACTED
IN NECESSARY SELF-DEFENSE.**

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Jones County, Mississippi, and a judgment of conviction for the crime of Manslaughter. Maurice Pruitt was sentenced to twenty (20) years in the custody of the Department of Corrections following a jury trial on April 2-3, 2008, Honorable Billy Joe Landrum, presiding. Pruitt is presently incarcerated with the Mississippi Department of Corrections.

FACTS

On or about July 2, 2007, David McMillan was killed outside the American Legion Hut (Hut) in Laurel, Mississippi. Tr. 117-121. The testimony of numerous witnesses at trial reflected that Maurice Pruitt shot McMillan. Pruitt himself even stated that he shot McMillan, but that he shot him out of self-defense because he was in fear for his life. Tr. 358.

According to the testimony of Melvin Sanders, a security guard at the American Legion Hut, stated that he witnessed Keitho Plummer (Keitho) and Pruitt in an argument in the parking lot outside the Hut. Tr. 265. Sanders continued that Keitho was fussing and Pruitt was just looking at him. Tr. 266. Sanders stepped in between Keitho and Pruitt. *Id.*

Sanders then was pushing McMillan back to the car and telling him to leave [Pruitt] alone because he had a gun. Tr. 266. Sanders tried to hold McMillan back twice. Tr. 276. Even though Sanders was holding McMillan, McMillan pushed Sanders and walked over to where Pruitt was standing. Tr. 267. When McMillan got over to where Pruitt was standing, Pruitt shot McMillan. *Id.*

Sanders then stated that Keitho was still fussing, and Pruitt then fired shots at Keitho. Tr. 268-69. Pruitt then got into a dark colored SUV and left the parking lot of the Hut. Tr. 271.

Keitho's testimony was that when he left the Hut, Pruitt was standing by his vehicle right by the side door. Tr. 185. Keitho claimed that as he walked by Pruitt, Pruitt made a comment to Keitho to which Keitho responded. Tr. 187. At that point Keitho stated that Pruitt started to follow him. Tr. 187. At some point, McMillan asks Keitho what is going on and Keitho tells McMillan not to worry about anything. Tr. 192.

However, McMillan decided to go over and approach Pruitt. *Id.* Keitho stated that Pruitt was backing up to his car, while still looking at Keitho and McMillan. Tr. 192-93. As McMillan got over to where Pruitt was standing, Keitho saw Pruitt shoot McMillan. Tr. 193. Keitho stated that Pruitt then pointed the gun at him. Tr. 194. Keitho took off running. Tr. 195. Keitho ran behind a white Tahoe. Tr. 195. Keitho claimed that he ran around the white Tahoe four or five times while Pruitt was shooting at him. Tr. 196.

However, according to the testimony of Tyrone Pearson (Pearson), Terry McClendon (Terry) and Carl (Carl) McClendon, as the Hut was closing and they were getting ready to leave, decided to wait on Pruitt to come out of the Hut. Tr. 289. Pearson stated he saw Pruitt come out of the Hut and saw a few guys behind Pruitt. Tr. 291-292.

When Pruitt got to where Pearson, Terry, and Carl were waiting McMillan was talking to Pruitt. Tr. 292. Pruitt told McMillan to go on, we are family. *Id.* Pearson even said that he tried to talk to McMillan but he was ignored. *Id.* McMillan started saying, "I ain't never

liked this MF no way, and I'll show y'all what to do to an MF like this." Tr. 292-293. Pearson then stated that he approached McMillan and told him, "[w]e all just like family." Tr. 293. McMillan proclaimed "[w]hat the F family got to do with this." *Id.* Eventually McMillan turned away. *Id.*

When McMillan turned away, Keitho turned and went behind McMillan. *Id.* Pruitt standing behind Pearson told him to just move, that he had too much to lose. Tr. 293-294. Then McMillan started coming back toward Pearson and Pruitt at a fast motion. Tr. 294. Pearson testified that McMillan was carrying something in his hand. *Id.* The object was in his right hand beside his right thigh. Tr. 294-295. Pearson stated that he could see the left hand but could not see the right hand. Tr. 295.

Pearson attests that as McMillan was approaching, he stepped in front of McMillan to try to talk to him again. Tr. 296. McMillan using only his left hand, pushed Pearson to the side and then Pruitt shot McMillan less than two feet away. Tr. 296-97. The testimony of Terry McClendon was factually similar to Pearson's testimony. Tr. 315-323. C a r l McClendon's testimony was similar to Pearson's testimony also with a few minor additions. Tr. 323-336. In addition, Carl stated that after McMillan left Pruitt the first time, Carl noticed that all of the sudden McMillan went over to the car and bent down. Tr. Tr. 326-27. McMillan then started to come back and the security guard tried to stop him, but McMillan just walked past the security guard. Tr. 327. McMillan walked real fast with his right hand slightly behind his back to Pruitt. *Id.*

Pruitt testified before the court explaining what he perceived happened on the night in question. Pruitt stated when he left the Hut and walking towards his vehicle; he noticed Keitho was coming from the direction of the back door of the Hut. Tr. 347. As Keitho and Pruitt crossed paths, they both made a comment "what you looking at." *Id.*

Pruitt then walked toward his truck. *Id.* As Pruitt was nearly at his vehicle, he looked over his shoulder and saw Keitho and McMillan. Tr. 347-48. McMillan was talking loud and directing an argument toward Pruitt. Tr. 348. Keitho, McMillan, and two other guys walked over towards Pruitt. *Id.*

Pearson then stepped in and tried to prevent anything from happening. Tr. 349. McMillan turned and walked away. *Id.* Keitho and the two other guys walked away also. *Id.* However, McMillan, Keitho, and the other two guys were still "mouthing off." *Id.* McMillan was doing most of the talking. *Id.*

Pruitt saw McMillan open up the door of the car and reach down into the car. Tr. 349-50. McMillan then was walking fast toward Pruitt. Tr. 350-51. Pruitt noticed that Keitho had moved over beside a Tahoe. Tr. 350. McMillan was coming toward Pruitt with his right hand behind his thigh. *Id.* Pearson then stepped out in front of McMillan again and McMillan, with his left hand, moved Pearson out of the way. Tr. 351. Pruitt then states that he pulled his pistol and fired three times at McMillan. *Id.* Pruitt then saw Keitho come out from behind the Tahoe and then Pruitt fired shots at Keitho. *Id.*

After shooting at Keitho, Pruitt went back and stood behind his truck, then he heard two gunshots. Tr. 352. When Pruitt heard the gunshots, he jumped and dropped his gun.

Id. He then proceeded to get in the truck drove across the parking lot. *Id.* When Pruitt left the parking lot, he heard at least three or four bullets hitting his truck. Tr. 353.

Pruitt then went to Laurel Mayor Melvin Mack's house and told him that he had been involved in a shooting. Tr. 358. Pruitt then turned himself in to the authorities. *Id.*

SUMMARY OF THE ARGUMENT

The State failed to prove beyond a reasonable doubt that Pruitt did not act in necessary self-defense when he shot McMillan. The evidence revealed that Pruitt and Keitho did not get along and were involved in prior violent incidents. Keitho and McMillan were together and both were arguing with Pruitt. McMillan was violent with the security guard, Sanders, and Pearson. Sanders told McMillan not to go back over to Pruitt's location. He also tried to stop McMillan two times, but McMillan just pushed through Sanders. Furthermore, once McMillan reached Pruitt, Pearson tried to stop McMillan and McMillan just threw Pearson out of the way en route to Pruitt. Pruitt was forced to make a decision to shoot McMillan because he was in fear that McMillan was going to cause imminent serious bodily injury to him. Accordingly, this Court should reverse Pruitt's convictions and sentence, and render a judgment of acquittal.

Alternatively, should this Court determine that the State presented sufficient evidence on the issue of self-defense, Pruitt contends that the verdict was against the overwhelming weight of the evidence. The overwhelming weight of the evidence established that Pruitt shot McMillan in necessary self-defense. Therefore the Court should reverse Pruitt's conviction and sentence and remand this case for a new trial.

ARGUMENT

ISSUE NO. 1

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.

In reviewing the sufficiency of the evidence, the relevant inquiry is whether, “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.” *Bush v. State*, 895 So. 2d 836, 843 (Miss. 2005) (quoting *Jackson v. Virginia*, 443 U.S. 307, 315, 99 S.Ct. 2781, (1979)). The verdict will not be disturbed where the evidence so reviewed is such that “reasonable fair-minded men in the exercise of impartial judgment might reach different conclusions on every element of the offense.” *Id.* (citing *Edwards v. State*, 469 So. 2d 68, 70 (Miss.1985)). However, the proper remedy is to reverse and render where the evidence “point[s] 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[.]” *Id.*

“When self-defense is raised, the State bears the burden of proving beyond a reasonable doubt that the defendant was not acting in necessary self-defense.” *Harris v. State*, 937 So.2d 474, 481 (¶23) (Miss. Ct. App. 2006) (citing *Heidel v. State*, 587 So.2d 835, 843 (Miss.1991)). Self-defense is addressed in Mississippi Code Annotated section 97-3-15(1)(f) (Rev.2006), which provides in pertinent part that:

“the killing of a human being . . . shall be justifiable . . . “[w]hen committed in the lawful defense of one’s own person or any other human being, where there shall be reasonable ground to apprehend a design to commit a felony or to do some great personal injury, and there shall be imminent danger of such design being accomplished.”

Miss. Code Ann. § 97-3-15(1)(f). “The phrase ‘reasonable ground to apprehend,’ used in the statute, implies apparent danger.” *Bell v. State*, 207 Miss. 518, 528, 42 So.2d 728, 731-32 (Miss. 1949) (citation omitted). The Mississippi Supreme Court defines “apparent danger” as “such overt demonstration, by conduct and acts, of a design to take life or do some great personal injury, as would make the killing reasonably apparently necessary to self-preservation or to escape great bodily harm.” *Id.* (citation omitted). “[T]he danger need not be actual, but only reasonably apparent and imminent.” *Id.* In the instant case, 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.

Evidence was established that Pruitt and Keitho did not get along and had a previous violent encounter at the same location as this incident. Keitho testified that he shot at Pruitt at the very same location eleven years prior. Tr. 199. Also, around December 31, 2006, Keitho and Pruitt got into another altercation and Keitho showed and pulled a gun on Pruitt. Tr. 343. Therefore, Pruitt had pre-existing reason to fear that Keitho and people with Keitho would again act in a manner likely to cause extreme bodily injury.

The evidence also showed that Keitho and especially McMillan were the aggressors. All of the eye-witnesses testified that McMillan approached Pruitt. Tr. 192-93, 250, 267, 294,

318, 327, 350-51. Evidence was also presented that McMillan was violent with two other people before he even got to Pruitt. Sanders stated that he told McMillan not to go over to where Pruitt was and tried to hold McMillan back twice. Tr. 276. Even though Sanders was holding McMillan, McMillan pushed through Sanders and walked over to where Pruitt was standing. Tr. 267. Also, McMillan pushed Pearson out of the way with his left hand as he came storming back to Pruitt. Tr. 327.

Furthermore, evidence was presented that Pruitt was in fear for his life because McMillan left the first argument with Pruitt and returned with his right hand behind his back. Tr. 350-51. Pruitt observed McMillan bend down and reach into a car. Tr. 350. From Pruitt's point of view, it appeared that McMillan had picked up a weapon.

When McMillan came storming back over to where Pruitt was standing, McMillan had his right hand down by his side hiding his hand behind his back. Tr. Tr. 350-51. Pruitt under fear that McMillan might pull out a weapon and shoot him, Pruitt out of fear shot McMillan.

The point to be stressed, is that, in order for a killing to be justified based on self-defense, "it [is] not required of [the defendant] to prove that he acted in justifiable self-defense, but only that he raise a reasonable doubt of his guilt of the charge against him, unjustifiable homicide. The law authorizes action on reasonable appearances." *Scott v. State*, 203 Miss. 349, 354, 34 So. 2d 718, 719 (Miss. 1948) (citations omitted) (emphasis added).

The evidence in the instant case easily raises a reasonable doubt as to Pruitt's guilt of the charge of unjustifiable homicide; that is all the law requires for a killing to be justified as self-defense. The evidence points in favor of Pruitt on the element of self-defense with significant force, such that a reasonable jury could not have found that Pruitt was guilty of murder beyond a reasonable doubt.

Accordingly, the evidence is insufficient to support Pruitt's conviction and sentence for manslaughter. Therefore, the trial court erred in denying Pruitt's motion for new trial, and this Court should reverse Pruitt's conviction and sentence and render a judgement of acquittal.

ISSUE NO. 2

THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE, WHICH ESTABLISHES THAT PRUITT ACTED IN NECESSARY SELF-DEFENSE.

Should this Court reject Pruitt's contention that the State presented insufficient evidence to support Pruitt's conviction for manslaughter, Pruitt asserts, in the alternative, that such a finding was against the overwhelming weight of the evidence.

In reviewing a challenge to the weight of the evidence, the verdict will be only be disturbed "when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice." *Bush v. State*, 895 So. 2d 836, 844 (Miss. 2005). The evidence is viewed in the light most favorable to the verdict. *Id.* (citing *Herring v. State*, 691 So. 2d 948, 957 (Miss.1997)). This Court "sits as a hypothetical thirteenth juror." *Lamar v. State*, 983 So. 2d 364, 367 (¶5) (Miss. Ct. App. 2008) (citing

Bush, 895 So. 2d at 844 (¶18)). “If, in this position, the Court disagrees with the verdict of the jury, ‘the proper remedy is to grant a new trial.’” *Id.* In the instant case, the overwhelming weight of the evidence established that Pruitt shot McMillan in necessary self-defense.

As explained above in the argument pertaining to the sufficiency of the evidence, the evidence established that Pruitt and Keitho had previous violent encounters. It is undisputed that on the night this incident occurred; McMillan, who was with Keitho, approached Pruitt. Pruitt, Pearson, Terry, and Carl all saw McMillan walking fast back toward Pruitt with his right hand hiding behind his thigh as if he had a weapon. Pruitt had imminent fear that McMillan was going to pull out a weapon and endanger his life. Therefore, the weight of the evidence showed that Pruitt had reasonable grounds to apprehend an imminent danger of great bodily injury if he did not shoot McMillan.

In light of the above-detailed evidence, the verdict reached in the instant case is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice. Therefore, the trial court erred in denying Pruitt’s motion for a new trial, and this Court should reverse Pruitt’s conviction and remand this case for a new trial.

CONCLUSION

Maurice Pruitt is entitled to have his manslaughter conviction reversed and rendered or in the alternative, reversed and remanded for a new trial.


Respectfully submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS
For Maurice Pruitt, Appellant

BY: 

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CERTIFICATE OF SERVICE

I, Benjamin A. Suber, Counsel for Maurice Pruitt, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

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