

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**NO. 2009-CT-00854-SCT**

**DANTE LAMAR EVANS**

**APPELLANT**

**v.**

**STATE OF MISSISSIPPI**

**APPELLEE**

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Certiorari from the Court of Appeals of the State of Mississippi,  
Case No. 2009-KA-00854-COA

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**SUPPLEMENTAL BRIEF FOR THE APPELLANT**

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**ORAL ARGUMENT REQUESTED**

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## STATEMENT OF THE CASE

On April 13, 2007, Dante Evans was arrested in connection with the death of his father, Darold Evans. (Tr. 40-42.)<sup>1</sup> Dante was fourteen years old at the time, and throughout his life, Dante had been a victim and a witness to his father's infliction of abuse on the rest of his family. His father frequently threatened the life of Dante's mother (Mot's Ex. D-1 at 5), and actually tried to kill her on two occasions, once by holding her head underwater in a bathtub and once by trying to hit her with a car (Exhibit S-12 at 31'-38'). Dante's father also lashed out at Dante, including an instance in which Darold seriously injured Dante's eye. (Exhibit S-12 at 40'-41'.) As a result of this violence, Dante was hospitalized as a child for depression and diagnosed with Post-Traumatic Stress Disorder (PTSD). (Mot's Ex. D-1 at 9.) Dante also struggled with suicidal ideations because of the conflict in his family. (Id. at 6, 8.)

In February 2007, Dante was sent to live alone with his father in Gulfport, Mississippi. During the six weeks that Dante stayed with his father, Darold Evans continued to abuse Dante physically and emotionally. (See Exhibit S-12 at 39'-40', 52'-55'.) When Dante sought help at school, his counselors informed Dante's father of the complaint, which only led to further beatings. (Exhibit S-12 at 53'; Tr. 305-09, 333-36.) Dante's injuries were even reported to DHS, but he received no assistance. (Tr. 336.) Alone and trapped in a small FEMA trailer with his father, there is evidence that Dante became convinced his father was going to kill him. (Exhibit S-2 at 86'-88'.)

Dante's trial counsel sought to present this evidence to the jury in support of an imperfect self-defense manslaughter theory. The trial court, however, (1) refused to let the defense present evidence of Darold Evans' abuse towards Dante and his mother; (2) precluded a defense expert who

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<sup>1</sup> References to the clerk's papers are cited herein as "C.P. \_." References to the transcript are cited herein as "Tr. \_." References to the videotaped statement are cited to the minute mark on the video and are noted herein as "Exhibit S-12 at \_'."

could have explained the impact of PTSD on Dante's actions; (3) refused to let the jury consider whether Dante had a subjective but actual belief that he was in great danger of death or bodily harm, which under Mississippi law would have made him guilty of a lesser offense; and (4) refused to let the jury consider Dante's youthful age in its deliberations. The trial court's decisions left the jury without any option to effectively consider the history of abuse and trauma in Dante's childhood or to apply a defense recognized by Mississippi law.

On March 12, 2009, Dante was convicted of murder and sentenced as an adult to a mandatory term of life imprisonment. (C.P. 5; Tr. 410-11.) On June 14, 2011, the Court of Appeals issued an *en banc* decision with six judges affirming Dante's conviction and sentence, and three judges dissenting.. Evans v. State, No. 09-KA-00854-COA, 2011 WL 2323016 (Miss. Ct. App. June 14, 2011), reh'g denied (Sept. 6, 2011). This Court granted certiorari on December 15, 2011. Dante Evans files this Supplemental Brief pursuant to Rule 17(h) of the Mississippi Rules of Appellate Procedure and incorporates by reference the arguments presented in his Petition for Writ of *Certiorari* and in the briefs previously filed in the Court of Appeals.

## ARGUMENT

### **I. THE TRIAL COURT ERRONEOUSLY REFUSED TO PERMIT THE JURY TO CONSIDER DANTE'S THEORY OF IMPERFECT SELF-DEFENSE.**

The defense's primary theory was that Dante acted "without malice but under a bona fide (but unfounded) belief that [his action] was necessary to prevent death or great bodily harm." Wade v. State, 748 So. 2d 771, 775 (¶12) (Miss. 1999). This Court's precedent explains that this theory of imperfect self-defense depends on whether the actor's apprehension was "*subjectively*, in his or her own mind, reasonable." Cook v. State, 467 So. 2d 203, 207 (Miss. 1985) (distinguishing imperfect self-defense from perfect self-defense). In other words, Mississippi law expressly ties the

theory of imperfect self-defense to the *subjective* mindset of the accused rather than to the actions of the victim or even that of a reasonable person. See Chandler v. State, 846 So. 2d 355, 362-63 (¶29) (Miss. 2006) (approving jury instruction proposed in this case). Although Dante presented evidence that he had been abused by his violent father and that he felt trapped in a dangerous living situation, the trial court refused to allow the jury to consider his defense.

This Court has clearly instructed trial courts that the evidentiary standard for instructing the jury on a defendant's theory of the case is *de minimis*. The evidence supporting such an instruction can be "weak, inconsistent, or of doubtful credibility," Ellis v. State, 778 So. 2d 114, 118 (¶15) (Miss. 2000), and it can be "meager . . . and highly unlikely," O'Bryant v. State, 530 So. 2d 129, 133 (Miss. 1988). See also Walker v. State, 913 So. 2d 198, 235 (¶138) (Miss. 2005) ("There needs not be even a plausible explanation [of the supporting evidence]."). As Mississippi law recognizes, the applicable standard is low precisely because the defendant has a fundamental and absolute right to present his theory of defense to a jury. Chinn v. State, 958 So. 2d 1223, 1225 (¶13) (Miss. 2007). Therefore, the trial court's refusal to instruct Dante's jury on imperfect self-defense was reversible error. Manuel v. State, 667 So. 2d 590, 593 (Miss. 1995) (reversing manslaughter conviction because trial court failed to provide jury with instruction on defendant's theory of self-defense).<sup>2</sup>

The record contained sufficient evidence to warrant an imperfect self-defense instruction, particularly because the facts of this case perfectly match the typical symptoms of a victim of battered child syndrome. See State v. Janes, 850 P.2d 495, 501-02 & n.5 (Wash. 1993) (describing

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<sup>2</sup> In the State's brief, it again cites cases where appellants were not granted a directed verdict for imperfect self-defense. (Appellee's Supplemental Br. 1-2.) However, the decisions relied on by the State are inapposite because the propriety of a jury instruction on imperfect self-defense was not at issue. See Moore v. State, 859 So. 2d 379, 384 (¶14) (Miss. 2003) (jury considered and rejected defense's theory of self-defense); Fair v. State, 25 So. 3d 380, 383 (¶7) (Miss. Ct. App. 2009) (imperfect self-defense raised for first time on appeal).

“the psychological effects of abuse-induced PTSD in children”). According to a psychological evaluation of Dante, his father’s abusive behavior towards Dante and his mother created a sense of fear and helplessness in Dante. (Mot’s Ex. D-1 at 8.) When Dante was sent to live alone with his father, the physical beatings and emotional abuse only intensified. (Tr. 312, 330-36; Exhibit S-12 at 14’, 31’-32’, 52’-55’.) Moreover, the steps Dante took to seek help backfired, further cementing his isolation and helplessness. (Exhibit S-12 at 53’). Thus, the record supports the theory that, like other battered children, Dante believed there was no other way to “escape from his life of abuse, other than by killing his abuser.” Joseph A. Shoaff, State v. Nemeth Equal Protection for the Battered Child, 31 Akron L. Rev. 147, 154 (1997); see also Merrilee R. Goodwin, Comment, Parricide: States Are Beginning to Recognize that Abused Children Who Kill Their Parents Should Be Afforded the Right to Assert a Claim of Self-Defense, 25 Sw. U.L. Rev. 429, 436-39 (1996) (“Profile of the Typical Battered Child”). In particular, the studies on battered children demonstrate that their actions, while motivated by self-defense, primarily occur in nonconfrontational settings because acting during a lull between instances of abuse is the child’s only chance to avoid a retaliatory, or even fatal, beating. Shoaff, Nemeth, supra, at 154-55.

Given this record, the jury could have determined that Dante’s actions stemmed from a bona fide fear for his own safety. The State claims that Dante’s father was not overly abusive and that Dante was motivated more by malice than by a need to defend himself. (Appellee’s Supplemental Br. 3.) But under Mississippi law, as with other questions regarding self-defense, Dante’s state of mind at the time of this incident was a question of fact that ought to have been determined by the jury. See Wade, 748 So. 2d at 774 (¶11). If the evidence supporting Dante’s theory was unpersuasive, the jury could have rejected the lesser-included verdict of manslaughter and still returned a conviction for murder. But the trial court’s refusal to let the jury consider Dante’s



primary theory of defense was an usurpation of the jury's proper role as fact-finder, and this Court should reverse his conviction.

## **II. THE TRIAL COURT IMPROPERLY PREVENTED THE JURY FROM CONSIDERING EVIDENCE OF IMPERFECT SELF-DEFENSE.**

As a criminal defendant, Dante had a Sixth and Fourteenth Amendment right to present a defense by "call[ing] witnesses in his favor [and] cross-examin[ing] witnesses called against him." Moffett v. State, 49 So. 3d 1073, 1097 (¶76) (Miss. 2010); see also In re Oliver, 333 U.S. 257, 273 (1948). The trial court, in this case, refused to let Dante present corroborating evidence of his father's propensity for violence. This evidence would have supported the defense's theory that, due to his father's continuing abuse, Dante held a subjective belief that his actions were necessary to protect himself from further harm. See Cook v. State, 467 So. 2d 203, 207 (Miss. 1985).

First, Terrence Russell, a neighbor of the Evans', would have testified that he witnessed Dante's father beating Dante with a chain and a fist. (Tr. 308-09.) Mr. Russell would also have told the jury that Dante had confided with him about prior beatings, and he could have described the emotional toll that this abuse had on Dante. (Tr. 310.) Second, Officer Susan Kimball was not allowed to testify about any restraining orders placed against Dante's father by his family. (Tr. 236.) Dante did not offer the above evidence to show the victim's propensity for violence (see Appellee's Supplemental Br. 4); rather, the evidence was directly relevant to the theory of imperfect self-defense (see Tr. 292-98, 304-05, 312-13). The trial court's decision to preclude Mr. Russell's testimony and limit Officer Kimball's cross-examination compounded its mistake in refusing to offer an instruction on imperfect self-defense. See Issue I, supra. These errors prevented the jury from properly understanding Dante's theory of defense in this case and from properly considering his

culpability. Therefore, this Court should reverse his conviction. See Hentz v. State, 542 So. 2d 914, 915-17 (Miss. 1989).

### **III. THE TRIAL COURT ERRONEOUSLY PREVENTED THE JURY FROM CONSIDERING EXPERT TESTIMONY REGARDING DANTE'S HISTORY OF ABUSE AND HIS SYMPTOMS OF POST-TRAUMATIC STRESS DISORDER.**

Prior to trial, Dr. Beverly Smallwood found that Dante exhibited symptoms of Post-Traumatic Stress Disorder (PTSD) and that he had a prior diagnosis of PTSD. (Mot's Ex. D-1 8-9.) This report was sealed by request of defense counsel (R. 6, 17), and it was made part of the record on appeal (C.P. Index Page IV). Dr. Smallwood told trial counsel that she was unable to explain to a jury the characteristics and effects of someone who suffered from PTSD, and she recommended that the defense hire Dr. Gerald O'Brien to present this information to the jury.<sup>3</sup> (Tr. 11-12, 18-19.) The trial court denied Dante's motion for funds to hire Dr. O'Brien (Tr. 20), thereby preventing the jury from properly understanding and contextualizing Dante's history of abuse and trauma.

Because the jury's role was "to make a sensible and educated determination about the mental condition of [Dante] at the time of the offense," the trial court should have allowed the defense access to an expert who could help prepare and present its defense. Ake v. Oklahoma, 470 U.S. 68, 80-83 (1985). Studies of battered child syndrome acknowledge that

Expert testimony can dispel the belief that the child had a reasonable opportunity to escape the battering situation and that the killing was not a result of imminent harm.

...

... [Expert testimony] will enable a jury to understand how a battered child, who killed in a non-battering setting, perceived imminent danger and that the use of deadly force was reasonable.

Goodwin, Parricide, *supra*, at 448-55. Courts have found that an expert on PTSD is necessary for a jury to effectively understand the nature and effect of the disorder. State v. Hines, 696 A.2d 780,

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<sup>3</sup> Mississippi courts recognize that PTSD is a specialized field which has its own experts. Chapin v. State, 812 So. 2d 246, 249-50 (¶7-8) (Miss. Ct. App. 2002).

784-88 (N.J. Super. Ct. App. Div. 1997); see also State v. Smullen, 844 A.2d 429, 448-50 (Md. 2004); State v. Janes, 850 P.2d 495, 503 (Wash. 1993). Thus, the trial court reversibly erred by denying Dante's "request for the expert assistance needed to present his theory of imperfect self-defense and, more specifically, the issue related to his mental state at the time of the offense." Evans v. State, No. 09-KA-00854-COA, 2011 WL 2323016 (¶48) (Miss. Ct. App. June 14, 2011) (Carlton, J., dissenting).

#### **IV. THE TRIAL COURT IMPROPERLY PROHIBITED THE JURY FROM CONSIDERING THE CRITICAL FACTOR OF AGE IN ITS DELIBERATIONS.**

The trial court specifically instructed the jury to not let age enter into their deliberations - an overly-broad restriction that violated Dante's right to a fair trial and an impartial jury. (Tr. 94.) The trial court's subsequent decision to remove potential jurors on this issue reinforced its illegal prohibition in the minds of the remaining jurors. (Tr. 120-23; R.E. 23-26.) Because Dante was only fourteen at the time of the offense, his young age was critical to several of the jury's important factual deliberations in this case, including Dante's statements and whether they were voluntarily obtained; the theory of imperfect self-defense and whether Dante held a *subjective belief* that he was in danger of death or great bodily harm; and the elements of a murder conviction, Miss. Code Ann. § 97-3-19, and whether Dante acted with "full awareness of what [he was] doing" or with "careful and unhurried consideration of the consequences," Windham v. State, 520 So. 2d 123, 126 (Miss. 1987) (defining "deliberate design" element).

A fourteen-year-old child is different from an adult, and this distinction has been recognized by the United States Supreme Court as a fact that "generates commonsense conclusions about behavior and perception." J.D.B. v. North Carolina, 131 S. Ct. 2394, 2403-04 (2011) (quotation marks omitted) ("children cannot be viewed simply as miniature adults"); Roper v. Simmons,

543 U.S. 551, 569 (2005).<sup>4</sup> In this case, potential jurors were removed solely because they recognized this common-sense distinction between children and adults, and not because they could not be fair or impartial. (See, e.g., Tr. 95-96 (Juror Damiano: “I don’t think I could ignore the fact that he was 14.”); Tr. 116 (Juror Marin: “I don’t know that someone of this age could actually think as an adult.”).) The trial court’s decision to remove these jurors, coupled with his inaccurate instruction that age must be entirely excluded from their deliberations, denied Dante’s right to a fair trial by an impartial jury, and this Court should reverse his conviction.

**V. DANTE’S STATEMENTS TO LAW ENFORCEMENT OFFICERS WERE ADMITTED IN VIOLATION OF HIS FIFTH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION.**

As stated above, Dante incorporates by reference the arguments presented in his Petition for Writ of *Certiorari* and in the briefs previously filed in the Court of Appeals, and he asks this Court to reverse his conviction because of a violation of his Fifth Amendment right.

**VI. BECAUSE DANTE WAS FOURTEEN YEARS OLD AT THE TIME OF HIS OFFENSE, HIS MANDATORY LIFE SENTENCE IS UNCONSTITUTIONAL.**

In Graham v. Florida, 130 S. Ct. 2011, 2030 (2010), the United States Supreme Court held that a life imprisonment without parole sentence imposed on a juvenile offender may violate the Constitution. The Court held that “[a]n offender’s age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants’ youthfulness into account would be flawed.”

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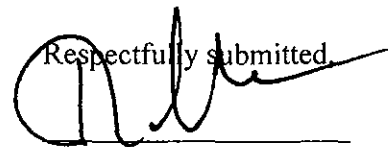
<sup>4</sup> Mississippi law also recognizes that fourteen-year-old children are insufficiently responsible and incapable of making decisions as adults. Accordingly, Mississippi has made the age of majority eighteen, Miss. Code Ann. § 93-19-13; the minimum age to vote eighteen, Miss. Const. art. 12, § 241; and the minimum age for jury service twenty-one, Miss. Code Ann. § 13-5-1. Mississippi law also places specific regulations and prohibitions on fourteen-year-olds. In contrast with older teens, fourteen-year-olds are required to attend school, Miss. Code Ann. § 37-13-91; are not allowed to drive, Miss. Code Ann. § 63-1-9, -21; are not allowed to donate blood, Miss. Code Ann. § 41-41-15; are not allowed to use tanning facilities without parental consent, Miss. Code Ann. § 41-115-1, are not allowed to have tattoos, Miss. Code Ann. § 73-61-1; are generally not allowed to marry, Miss. Code Ann. § 93-1-5(d); and, in most circumstances, cannot consent to sexual activity, Miss. Code Ann. § 97-3-65.

Id. at 2031. The Court also previously recognized that an offender's juvenile status is relevant to sentencing, even for homicide offenses. Roper v. Simmons, 543 U.S. 551 (2005).

Since the pleadings were filed in this case, the United States Supreme Court has granted certiorari in two separate cases involving fourteen-year-old children convicted of homicide, and a decision will be issued later this term. Miller v. Alabama, 63 So. 3d 676 (Ala. Crim. App. 2010), cert. granted, 80 U.S.L.W. 3275 (U.S. Nov. 7, 2011) (No. 10-9646); Jackson v. Norris, 2011 Ark. 49 (2011), cert. granted sub nom., Jackson v. Hobbs, 80 U.S.L.W. 3275 (U.S. Nov. 7, 2011) (No. 10-9647). Because Dante's age was not considered at his sentencing and because he was sentenced to a term of life imprisonment for an offense committed when he was fourteen-years-old, this Court should reverse his unconstitutional sentence.

#### CONCLUSION

For the foregoing reasons, Dante Evans respectfully asks this Court to reverse his unconstitutional conviction and sentence, and grant a new trial.

Respectfully submitted  


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## CERTIFICATE OF SERVICE

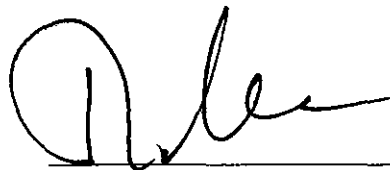
I hereby certify that on December 27, 2011, I served a copy of the attached pleading by

First-Class Mail, postage prepaid to:

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