

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JUSTIN VANQUES THOMAS

APPELLANT

VS.

NO. 2009-KA-0708

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

NATURE OF THE CASE

This is a direct appeal from a conviction of manslaughter in the Circuit Court of DeSoto County, Mississippi, Honorable Robert P. Chamberlin, presiding.

COURSE AND DISPOSITION OF THE CASE IN THE COURT BELOW

The Grand Jury indicted Justin Thomas for the murder of Dexter Harris. The Circuit Court of DeSoto County tried Thomas before a jury, and the jury returned a verdict of guilty of manslaughter. The Judge sentenced Thomas to a term of fifteen years. C.P. 8, 80, 86

Thomas filed a notice of appeal.

STATEMENT OF THE FACTS

On March 8 2008 a party was being held at the Performing Arts Building in Southaven, Mississippi. The building was formerly a church.

After the party ended, some younger boys from Horn Lake started a fist fight. Tr. 168-170, 199

Justin Thomas started firing his gun into the air. He then got into his car, locked his door, and began to reload his gun. Tr.169-172

Kenteric Randolph told Thomas to get out of his car. When Randolph saw Thomas reload his gun, he ran to the back end of Thomas's car. Dexter Harris and three others were standing at the back end of the car with Randolph. Tr. 173. There was nothing in front of Thomas's car to prevent front driving forward and leaving. Tr. 176.

Randolph threw a cellphone at the back window of Thomas's car. Tr. 173-174

Thomas opened his window and fired his gun three or four times. Dexter Harris went down, tried to get up, and he fell down again. Harris drove his car away. Tr. 176.

Two bullets entered Dexter Harris's body. Tr.115. Dexter Harris died from a gunshot wound to the chest. The bullet traveled through both lungs and his heart. Tr. 122

SUMMARY OF THE ARGUMENT

Thomas raises two issues. First, he argues that the trial Judge erred when he denied Thomas's requested instruction charging the jury that there was a presumption that he was in imminent danger of death or serious bodily harm, *i.e.*, the Castle Doctrine. Respectfully, the Judge correctly found that the evidence did not fit the Castle Doctrine. This was not a case where the evidence supported a finding that the men were still attempting to illegally enter Thomas's car in order to kill him or do him serious bodily injury. Any attempt to enter Thomas's car had ceased when the men saw Thomas reloading his pistol, and they retreated behind his car wherefrom they had no access into Thomas's car.

Thomas's second issue is that the verdict of guilty of manslaughter is against the

overwhelming weight of the evidence. The evidence supports the verdict.

ARGUMENT

Thomas had a fair trial. The facts were not sufficient to cause the presumption to arise under the Castle Doctrine. The Court granted the self-defense instruction out of an abundance of caution, but the evidence was just not such that the Court should have charged the jury to presume certain facts when it applied the law to the facts. To do so would be to expand the Castle Doctrine to apply to a factual scenario not intended by the Legislature.

PROPOSITION ONE.

WHETHER OR NOT THE COURT ERRED WHEN IT DENIED THOMAS'S REQUESTED INSTRUCTION D-12, WHICH CHARGED THE JURY THAT IT WAS TO PRESUME THAT THE KILLING WAS JUSTIFIABLE.

Thomas argues that the Court erred when it denied his request to have the jury instructed with D-12, which he argues uses language directly from *Miss. Code Ann.*, § 97-3-19(3). 97-3-15(3) states what is called the Castle Doctrine, which creates a presumption that a person reasonably feared imminent death or great bodily harm if he was occupying a vehicle and if the victim “. . . was in the process of unlawfully and forcibly entering, or had unlawfully and forcibly entered, a . . . occupied vehicle, . . .”

The Judge did not abuse his discretion when he denied the instruction because the Castle Doctrine did not apply the facts. The presumption did not arise because the men had stopped attempting to get Thomas out of his car and had retreated to a position behind his car before he shot and killed Dexter Harris. The first condition did not occur; therefore, the presumption did not arise. Additionally, the men ran to Thomas's car because he fired the pistol numerous times scaring and scattering most of the people still in the parking lot. Generally, firing the pistol would have been an illegal act, and the presumption would not have arisen.

The doctrine requires a showing that the men were attempting to unlawfully enter Thomas's vehicle in order to kill him or do him serious bodily injury. The doctrine does not apply if the person who uses defensive force is engaged in some unlawful activity. § 97-3-15(3).

The evidence supported a finding that all of the men involved ran away from the doors of Thomas's car and were standing behind his vehicle when they saw Thomas reloading the pistol. No one was attempting to unlawfully enter Thomas's vehicle and do him harm when he rolled down the window and shot and killed Dexter Harris. There is evidence that one man threw a cellphone at the back window.

The facts do not support a finding that the men behind Thomas's car were attempting to enter his car in order to kill him or do him serious bodily injury immediately before Thomas shot Harris. The facts support a finding that the men earlier tried to enter the car to get Thomas to get out, but, upon seeing Thomas reload his gun, they retreated behind the car to a position from which they no longer had access to any of the doors of the automobile and could not enter the vehicle. Any attempt to illegally enter Thomas's car ended and disappeared before Thomas rolled down the window and shot Harris.

Additionally, there was no evidence that Harris attempted at any time to enter the car in order to extricate Thomas from his automobile.

The Court reviews the jury instructions given as a whole to determine whether the refusal of a particular instruction was in error. *Taylor v. State*, 763 So.2d 913, 915(¶ 8) (Miss.Ct.App.2000). "[I]f the instructions announce the law of the case fairly and create no injustice, no reversible error will be found." *Id.* (quoting *Coleman v. State*, 697 So.2d 777, 782 (Miss.1997)). "A defendant is entitled to have jury instructions given which present his theory of the case, however, this entitlement is limited in that the court may refuse an instruction which incorrectly states the law, is covered fairly

elsewhere in the instructions, or is without foundation in the evidence.” *Poole v. State*, 826 So.2d 1222, 1230(¶ 27) (Miss.2002) (quoting *Smith v. State*, 802 So.2d 82, 88 (Miss.2001)). *Hager v. state*, 996 So.2d 94, 97 (Miss.App.2008)

97-3-15(3) is stated below.

(3) A person who uses defensive force shall be presumed to have reasonably feared imminent death or great bodily harm, or the commission of a felony upon him or another or upon his dwelling, or against a vehicle which he was occupying, or against his business or place of employment or the immediate premises of such business or place of employment, if the person against whom the defensive force was used, was in the process of unlawfully and forcibly entering, or had unlawfully and forcibly entered, a dwelling, occupied vehicle, business, place of employment or the immediate premises thereof or if that person had unlawfully removed or was attempting to unlawfully remove another against the other person's will from that dwelling, occupied vehicle, business, place of employment or the immediate premises thereof and the person who used defensive force knew or had reason to believe that the forcible entry or unlawful and forcible act was occurring or had occurred. This presumption shall not apply if the person against whom defensive force was used has a right to be in or is a lawful resident or owner of the dwelling, vehicle, business, place of employment or the immediate premises thereof or is the lawful resident or owner of the dwelling, vehicle, business, place of employment or the immediate premises thereof or if the person who uses defensive force is engaged in unlawful activity or if the person is a law enforcement officer engaged in the performance of his official duties;

Miss. Code Ann. § 97-3-15.

The pertinent parts of § 97-3-15 are restated separately below.

(3) A person who uses defensive force shall be presumed to have reasonably feared imminent death or great bodily harm, or the commission of a felony upon him or another . . . or against a vehicle which he was occupying, . . .

if the person against whom the defensive force was used, was in the process of unlawfully and

forcibly entering, or had unlawfully and forcibly entered, a dwelling, occupied vehicle, . . .

or was attempting to unlawfully remove another against the other person's will from that dwelling, occupied vehicle, . . . or the immediate premises thereof . . .

and the person who used defensive force knew or had reason to believe that the forcible entry or unlawful and forcible act was occurring or had occurred.

This presumption shall not apply . . . if the person who uses defensive force is engaged in unlawful activity or . . .

The essential facts are found below.

After Thomas fired his pistol several times and the people scattered, Kenteric Randolph went to Thomas's car, tried to open the door, and told Thomas to get out. Randolph saw Thomas reload his gun, and he ran to the back end of Thomas's car. Dexter Harris and three others were standing at the back end of the car with Randolph. Tr. 173. There was nothing in front of Thomas's car to prevent front driving forward and leaving. Tr. 176.

Randolph threw a cellphone at the back window of Thomas's car. Tr. 173-174

Thomas opened his window and fired his gun three or four times. Dexter Harris went down, tried to get up, and he fell down again. Harris drove his car away. Tr. 176.

Before Thomas shot Harris, Thomas turned around in his seat and pointed the gun at Harris as if his intention was to shoot Harris, not to shoot into the air. Tr. 203-204

There was nothing in front of Thomas's car to prevent him from driving forward and leaving.

Tr. 176, 196.

No one exhibited a gun except Thomas. No one had a knife, stick, club. No one threatened to kill Thomas with a gun. Tr. 254, 195, 204

The people were behind the car. They had been asking whey he shot the gun. Tr. 248-249.

Thomas could have left without shooting. Tr. 256

Thomas gave a statement to law enforcement. He told them that someone had been shot, and he was afraid that he would be blamed. Thomas did not say he had acted in self-defense or that he was in fear. Tr. 294-295, 298-299, 321

Thomas told Detective Mark Little that he heard some gunshots, but he did not at the time tell Little that he fired his pistol. Little told Thomas that he intended to perform a gunshot residue test on his hands. After a while, Thomas told the Detective that he had fired a gun at a friend's house earlier that day. Thomas finally admitted that he shot the gun into the air outside the party in the parking lot. Tr. 314 315

Thomas denied that he shot the gun from the car. Tr. 316. Thomas said he fired some gunshots to scare the others off, and he then drove away from the scene. Thomas said afer he drove away that people called him and told him that he had killed someone. Tr. 322.

97-3-15(3) DOES NOT APPLY.

This is not a case where the men were surrounding Thomas's car and were clearly taking steps to enter the car. They were afraid of Thomas's gun. The evidence supports a finding that only Thomas had the gun.

The Judge did not abuse his discretion or err when he found that the Castle Doctrine did not apply under these facts. While Thomas was not required to retreat, he also did not have a right to shoot the men behind his car after they retreated, left the doors of his car, and no longer had access

to him. While they may have desired to get him out of the car, they were not attempting to enter the car when they stood behind it.

The ability to drive away does not implicate only the absence of any duty for Thomas to retreat. It also implicates whether or not Thomas faced imminent death or serious injury. The relative positions of the men and the car, and Thomas's ability to drive away if he chose, and Thomas's possession of the only gun or deadly weapon supports a finding that Thomas was not facing imminent death or serious bodily injury.

The statute announces the presumption that arises when a shooter fires from a vehicle in order to prevent an unlawful entry into the vehicle before it happens. In this case, it was not possible for the men to enter the vehicle once Thomas held them at bay behind the car (where they were supposedly out of the range of Thomas's pistol).

Again, Thomas was no longer under threat and the presumption did not arise when he shot and killed Dexter Harris.

Additionally, Thomas acted illegally when he initially fired the pistol to scare the others, he was committing an illegal act. This provoked the men and caused them to approach his car and to attempt to extricate Thomas in the first place. The presumption in the statute does not arise if the shooter was committing an illegal act.

PROPOSITION TWO.

WHETHER OR NOT THE VERDICT OF MANSLAUGHTER WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

Thomas argues that the facts fall within the definition of justifiable homicide. Mississippi law requires more than meeting the definition of justifiable homicide. Many of the facts refute a finding of justifiable homicide.

The Mississippi Supreme Court recently restated our rule. In determining whether a jury verdict is against the overwhelming weight of the evidence, “this Court will only overturn a jury verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice.” *Boyd v. State*, 977 So.2d 329, 336 (Miss.2008) (citing *Taggart v. State*, 957 So.2d 981, 987 (Miss.2007)). When making this determination, “the evidence should be weighed in the light most favorable to the verdict.” *Bush v. State*, 895 So.2d 836, 844 (Miss.2005) (citing *Herring v. State*, 691 So.2d 948, 957 (Miss.1997)). If, in viewing the evidence in the light most favorable to the verdict, allowing the verdict to stand would constitute an unconscionable injustice, the proper remedy is to grant a new trial. *Bush*, 895 So.2d at 844-845. *Long v. State*, 2009-KA-1861-SCT, ¶ 11, Jan. 20, 2011. 2011 WL 167460, 3 (Miss.) (Miss.2011).

When viewing the evidence in the light most favorable to the verdict, the verdict of guilty of manslaughter is not against the overwhelming weight of the evidence. There is evidence supporting a finding that Thomas shot out from his window and killed Dexter Harris while Harris was standing behind his car. There is evidence that Thomas aimed the pistol at Harris as if attempting to shoot him, not to merely shoot into the air. There is also evidence supporting a finding that neither Harris nor the other men were in a position to forcibly enter Thomas’s car at the time because they were afraid of Thomas’s gun. The evidence supported a finding that Thomas was the only man armed, and that he had already shot his gun numerous times into the air, clearing the parking lot of most of the people attending the party.

With all due respect, the verdict of manslaughter is not against the overwhelming weight of the evidence.

CERTIFICATE OF SERVICE

I, Scott Stuart, 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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This the 17th day of February, 2011.



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CONCLUSION

The State asks this Court to affirm the conviction of manslaughter from the Circuit Court of DeSoto County, Mississippi.

Respectfully submitted,

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