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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JUSTIN VANQUES THOMAS

APPELLANT

VS.

NO.: 2009-TS-00708-

COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF THE APPELLANT

STATEMENT OF ISSUES

- I. THE DENIAL OF INSTRUCTION "D-12", commonly referred to as a "Castle Doctrine". Instruction unfairly disabled Thomas's ability to fully argue his case before a jury that was properly educated on the law applicable in his particular case.
- II. THOMAS'S CONVICTION WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

STATEMENT OF FACTS

On March 8, 2008, a "fundraiser" party was conducted in Southaven, Mississippi. T. 154, 165. Participating in the party were people from highschool and a local community college. T. 155, 165. At the party there was a crowd of people and cars conjugating outside the party. T. 156, 350.

Unprovoked, Justin Buckner, a guest at the party, was brutally attacked by a group of young men outside the party. T. 168, 209, 351, 369. Security could not stop the attack. T. 209, 210, 237, 369, 402. The eventual victim, Dexter Harris, was in the group attacking Buckner. T. 352, 377, 407.

Justin Thoms shot a gun in the air, and the attack stopped. T. 169, 211, 237, 353, 372, 402, 404. The young men that were assaulting Buckner stopped and a group of them turned toward Thomas who fled the mob and went to his car. T. 404. Dexter Harris was part of the mob that went to the car, then occupied by Justin Thomas. T. 250, 373, 407.

While at the car, the crowd kicked, hit the doors, windows, and attempted to open the doors of Thomas's car. T. 172, 185, 248, 249, 253, 373, 375, 405, 406. These attempts to remove Thomas from the car lasted for well over a minute. T. 185, 249.

While the men were attempting to open the car doors and punch the windows, one threw a hard object, identified as a cell phone, with enough force to break the phone into two pieces. T. 174, 188.

After this sequence of events, two shots were fired from what appeared to be Thomas's car. T. 176. Harris was struck in his chest and thigh, and his life expired. T. 113, 125.

SUMMARY OF ARGUMENT

The Castle Doctrine should have applied to the facts of his case, and a jury should have been charged in regard to said law.

The overwhelming evidence in this case should have resulted in an acquittal based on the fact that the homicide was justifiable.

ARGUMENT

I. THE DENIAL OF INSTRUCTION "D-12".

In determining whether error lies in the granting or refusal of various instructions, the instructions actually given must be read as a whole. When so read, if the instructions fairly announce the law of the case and create no injustice, no reversible error will be found. *Johnson v. State*, 823 So. 2d 582, 584 (MS Ct. App. 2002) (citing *Collins v. State*, 691 So. 2d 918, 922 (Miss. 1997)). "A trial judge may refuse an instruction which incorrectly states the law, is without foundation in the evidence, or is stated elsewhere in the instructions." *Murphy v. State*, 566 So. 2d 1201, 1206 (Miss. 1990).

In short, when the instructions read "as a whole" were given in this case Judge Robert P. Chamberlin in essence refused to instruct the jury on the law as applicable to the factual evidence presented by both state and defense witnesses. Furthermore, by determining that the statute drafted by the legislature to protect citizens - be they 65 year old women or 21year old men - equally could not apply to the case at bar, deprived the jury of the ability to apply existing law to the facts of this case.

Instruction D-12 did not incorrectly state the law. The instruction used language directly from Mississippi Code Annotated § 97-3-15 as amended in 2006. Instruction D-12 reads as follows:

"The killing of Dexter Harris by the act, procurement or omission of Justin Vanques Thomas, shall be justifiable if committed by Justin Thomas in resisting any attempt unlawfully to kill Justin Thomas or to commit any felony upon Justin Thomas, or upon any dwelling, in any occupied vehicle, in any place of business, in any place of employment or in the immediate premises thereof in which Justin Thomas was found."

The defense was willing to alter any perceived misstatements or mischaracterization in the instruction, but no such opportunity was offered by the Court.

The foundation for the instruction was clearly laid by the evidence elicited by all eye witnesses (including Mr. Thomas's attackers) involved in the case. As shown in the transcripts and explored in the fact section, it was clear that the crowd which encircled the car of Justin Thomas planned to force entry, and cause harm to his person. According to at least one of the parties attempting entry, the goal was to harm Thomas or at least cause him to be afraid.

The premises expressed in D-12 do not appear in any other instruction. There is not a place indicating that the jury could consider whether the ability to protect an a person inside an occupied vehicle is directly akin to allowing one to use deadly force in the protection of a person inside one's home. The instruction speaks clearly to rights that are the creature of statute, that one cannot assume that members of the jury knew or should know.

II. THOMAS'S CONVICTION WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

A conviction should not be allowed to stand when allowing the verdict to stand would sanction an unconscionable injustice. *Bush v. State*, 895 So. 2d 836, 844 (Miss. 2005).

Each witness took the stand indicating that 1) there was a fight (characterized by most witnesses as at least 5 or more against one); 2) that Thomas fired 2 or 3 shots in the air and the fight stopped; 3) a group of men - of whom the victim, Dexter Harris, was one - chased him to his car and after he was inside, repeatedly attempted to enter, with

what would appear to a reasonable person, to commit harm to the person of Justin Thomas.

This case places a burden of "double retreating" that the law has never required. Thomas fired his pistol - stopping a vicious attack on an unarmed person. He then retreated, while he had a loaded gun in his hand, to the sanctuary of his own car. Only after the car was attacked, objects thrown at the windows, the doors being repeatedly pulled, did the second set of shots occur. Seemingly, this falls directly into the definition of Mississippi's justifiable homicide statute.

CONCLUSION

The Court's refusal of the "Castle Doctrine" instruction denied the jury to be charged by the presiding judge on an essential facet of the defense's case. Because of this deprivation, Thomas was convicted by a jury that did not receive full and formal notice of the existing law related to his defense.

The evidence presented clearly supported a not guilty verdict, because of the actions taken by Justin Thomas - unfortunate as the end result was - were clearly justified.

Appellant respectfully asks this Honorable Court to reverse and remand Thomas's conviction.

CERTIFICATE OF SERVICE

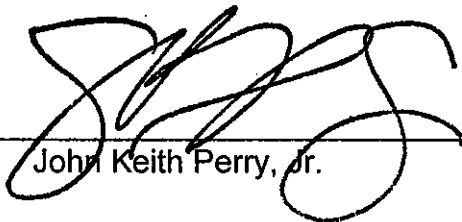
The undersigned does hereby certify that he has this day placed a true and correct copy of the foregoing in the U.S. Mail, First Class postage prepaid, properly addressed to:

Honorable Robert P. Champberlin
Circuit Court Judge
Post Office Box 280
Hernando, MS 38632

Honorable John W. Champion
District Attorney
365 Loshier Street, Suite 210
Hernando, MS 38632

Mississippi Attorney General's Office
Walter Sillers Building
550 High Street, Suite 1200
Jackson, MS 39201

on this the 11th day of November, 2010.



John Keith Perry, Jr.