IN THE COURT OF APPEALS OF MISSISSIPPI

EDNA MAE SANDERS — **APPELLANT**

V. — **CAUSE NO. 2009-KA-01925-COA**

STATE OF MISSISSIPPI — **APPELLEE**

REPLY BRIEF OF APPELLANT

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I.

SUMMARY OF REPLY

The Appellant, Edna Mae Sanders, rests on the arguments submitted to this Court in her *Brief of Appellant*, filed on June 1, 2010, as sufficient counterargument to the State's *Brief for the Appellee*, with the following specific rebuttals.

First, the U.S. Supreme Court's decision in ***Crawford v. Washington***, 541 U.S. 36 (2004), is not inapplicable when a Rule of Evidence provides for a hearsay exception. It is fundamental constitutional law that statutes and rules alike must conform to constitutional mandates. Indeed, ***Crawford*** reversed the conviction of a man convicted through use of statements admitted under a state-sanctioned hearsay exception. ***Id.*** at 40.

Second, the castle doctrine's application is not limited to circumstances in which a defendant's retreat is impossible. To the contrary, the central purpose of the castle doctrine's passage was to abolish the duty to retreat in one's own home.

Third, the trial court's refusal to admit declarations of Sherman Sanders regarding his intent to kill Mrs. Sanders did not affect evidence that was merely redundant. The hearsay statements of Sherman Sanders would have provided the clearest possible insight into his state of mind, and, therefore, the objective reasonableness of Mrs. Sanders' use of force. The trial judge's refusal to admit it precluded Mrs. Sanders from submitting to the jury the most important evidence supporting her theory of the case.

II.

ARGUMENT

A. THE U.S. SUPREME COURT'S DECISION IN *CRAWFORD V. WASHINGTON* IS NOT INAPPLICABLE WHEN A RULE OF EVIDENCE PROVIDES A HEARSAY EXCEPTION.

In her first brief to this Court, Mrs. Sanders submitted that this Court's shortest path through the case at bar lay in recognition that the trial court violated the holding of ***Crawford v. Washington***, 541 U.S. 36 (2004), by admitting statements made by Sherman Sanders that implicated Mrs. Sanders as his assailant. The State contended in its response that "[t]he cross examination requirement stated in ***Crawford*** is not applicable where statements by a decedent are admissible under applicable rules of evidence." Brief of Appellee at 14 (full citation omitted). In other words, the State takes the position in this case that the Mississippi Rules of Evidence trump the Sixth Amendment to the United States Constitution.

The State is incorrect. Constitutional guarantees are the supreme laws of the land – period. Statutes, rules, and common law all must yield to the commands of the Constitution, and as ***Crawford*** itself demonstrates, the Rules of Evidence enjoy no exception. Indeed, the central grievance voiced by the defendant in ***Crawford*** concerned evidence admitted through a state-sanctioned hearsay exception. ***Id.*** at 40. As the majority itself concluded, "[w]here testimonial statements are involved, we do not think the Framers meant to leave the Sixth Amendment's protection to the vagaries of the rules of evidence . . . ." ***Id.*** at 61.

Of crucial importance is the State's abstention from arguing against – and, therefore, apparently conceding to – the conclusion that the statements uttered by Sherman Sanders to implicate Mrs. Sanders amounted to testimonial evidence. The hearsay evidence presented by the State in the case at bar was testimonial in nature; "interrogations by law enforcement officers

fall squarely within that class." ***Crawford***, 541 U.S. at 53. A statement made to a police officer by the victim of a crime about the identity of a suspect is, by its very nature, a "statement[ ] that w[as] made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." ***Crawford***, 541 U.S. at 52. Indeed, such a statement implicates perhaps the two most fundamental aspects of a crime: the nature of the act and the identity of the actor himself.

The State's position regarding ***Crawford's*** inapplicability is incorrect as a matter of law. Application of its holding remains this Court's quickest, cleanest path to complete adjudication of the instant appeal.

B. THE CASTLE DOCTRINE'S APPLICATION IS NOT LIMITED TO CIRCUMSTANCES IN WHICH A DEFENDANT'S RETREAT IS IMPOSSIBLE.

In rebuttal to Mrs. Sanders' contention that the trial court should have instructed the jury regarding her rights under the then-only-recently passed "castle doctrine," the State argues that the trial court properly refused such an instruction because Mrs. Sanders "did not testify about any inability to retreat from her husband . . . ." Brief of Appellee at 15.

The State is incorrect. The plain text of the amended Section 97-3-15 provides that "[a] person who is not the initial aggressor and is not engaged in unlawful activity shall have no duty to retreat before using deadly force . . . if the person is in a place where the person has a right to be . . . ." Miss. Code Ann. § 97-3-15(4). *See* ***Johnson v. State***, 997 So. 2d 256, 260 n.2 (Miss. Ct. App. 2008) (Chandler, J.) ("The Castle doctrine . . . curtailed the duty to retreat . . ."). *See also* ***State v. Barraza***, 104 P.3d 172, 177 (Ariz. Ct. App., Div. 1, Dept. C 2005) ("Under the so-called Castle Doctrine, those who are unlawfully attacked in their homes have no duty to retreat, because their homes offer them the safety and security that retreat is intended to provide."); ***State***

v. James, 867 So. 2d 414, 416 (Fla. Dist. Ct. App., 3d Dist. 2003) ("The 'duty to retreat' rule has an exception, known as the 'castle doctrine,' which espouses that one is not required to retreat from one's residence, or one's 'castle,' before using deadly force in self-defense, so long as the deadly force is necessary to prevent death or great bodily harm."); ***People v. Riddle***, 649 N.W. 2d 30, 34 (Mich. 2002) (the castle doctrine "provid[es] an exception to th[e] duty to retreat when a person is attacked within his dwelling").

So long as Mrs. Sanders offered any evidence that she was not the aggressor in her confrontation with Sherman Sanders – and her testimony is replete with such evidence – she was entitled to a jury instruction consistent with the castle doctrine. Because she was not afforded such an instruction, her conviction must be reversed.

C. THE TRIAL COURT'S REFUSAL TO ADMIT DECLARATIONS OF SHERMAN SANDERS REGARDING HIS INTENT TO KILL MRS. SANDERS DID NOT AFFECT EVIDENCE THAT WAS MERELY REDUNDANT.

In its response to Mrs. Sanders' appellate brief, the State appears to concede that evidence of her state of mind was relevant to her theory of the case. *See* Brief of Appellee at 19 ("the record reflects that Sanders testified *without objection* about alleged confrontations with her husband") (emphasis added). However, the State contends that otherwise admissible hearsay statements made by Sherman Sanders regarding an intent to kill Mrs. Sanders would have been "repetitive," Brief of Appellee at 22, and, presumably, a harmless error.

The State is incorrect. Mrs. Sanders' self-defense theory, like any self-defense theory, rested heavily on objective evidence. *See* ***Robinson v. State***, 434 So. 2d 206, 207 (Miss. 1983) (overruled on other grounds, ***Flowers v. State***, 473 So. 2d 164, 165 (Miss. 1985)). Any testimony by Mrs. Sanders regarding her belief that Sherman Sanders intended to kill her was entirely subjective in nature. On the other hand, evidence of an intent expressed by Sherman Sanders to

kill his wife would have provided objective evidence supporting the reasonableness of Mrs. Sanders' use of force. Therefore, contrary to the State's suggestion, evidence of Mrs. Sanders' state of mind and Sherman Sanders' state of mind were not redundant but complementary.

Because of their fundamentally different natures, admission of one would not cure an absence of the other. The trial court's erroneous denial to Mrs. Sanders of access to such evidence was not harmless error but, rather, is a proper basis for reversal of her conviction.

III.

CONCLUSION

Each of the arguments offered by the State in its brief fails as a matter of law. The Confrontation Clause, as discussed in the U.S. Supreme Court's ***Crawford v. Washington*** decision, does not yield to the Rules of Evidence. Additionally, the castle doctrine is not inapplicable when an attacked occupant could have retreated from an assault in her own home. And finally, the trial court's denial of Mrs. Sanders' attempt to introduce statements evincing Sherman Sanders' intent to kill her did not merely preclude access to redundant evidence.

For each of these reasons, this Court should reverse Mrs. Sanders' conviction.

RESPECTFULLY SUBMITTED this SEVENTH day of July 2010,

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies delivery of a true and correct copy of the foregoing *Brief of Appellant* on the following interested parties via United States Postal Service mail, postage prepaid:

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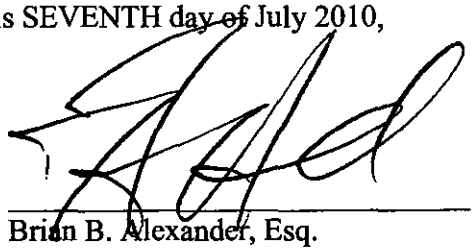

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