IN THE SUPREME COURT OF MISSISSIPPI

TIMOTHY ROBERT RONK — APPELLANT

v. — No. 2011-DP-00410-SCT

STATE OF MISSISSIPPI — APPELLEE

SUPPLEMENTAL BRIEF OF THE APPELLANT

Appeal from the Circuit Court of Harrison County,
First Judicial District
No. B2401-2009-0434

Alison Steiner
Miss Bar No. #7832
OFFICE OF STATE PUBLIC DEFENDER
CAPITAL DEFENSE COUNSEL DIVISION
239 N. Lamar St. Suite 604
Jackson MS 39201
astei@ospd.ms.gov
T: (601) 576-2314
F: (601) 576-2319

Justin T. Cook
Miss Bar No. #102622
OFFICE OF STATE PUBLIC DEFENDER
INDIGENT APPEALS DIVISION
P.O. Box 3510
Jackson MS 39207
jcook@ospd.ms.gov
T: (601) 576-4290
F: (601) 576-4205

Attorneys for the Appellant

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STATEMENT OF THE ISSUE

WHETHER THIS COURT'S ANALYSIS OF THE TRIAL JUDGE'S DENIAL OF THE DEFENDANT'S IMPERFECT SELF-DEFENSE INSTRUCTION SHOULD RELATE TO THE DEFENDANT'S ARMED ROBBERY CONVICTION AS WELL AS HIS CAPITAL MURDER CONVICTION.

PROCEDURAL STATUS

On July 13, 2012, Ronk filed his principal brief before this Court. The State's brief was filed on January 1, 2013. On March 28, 2013, Ronk filed his reply brief. This case was argued and submitted to this Court on July 16, 2013. On November 12, 2013, this Court issued its Order requesting supplemental briefing. This brief is submitted in the time allowed by that Order.

SUPPLEMENTAL ARGUMENT

A CONVICTION OF IMPERFECT SELF-DEFENSE MANSLAUGHTER WOULD NECESSARILY NEGATE THE POSSIBILITY THAT THE FORCE USED TO KILL WAS EMPLOYED "AS A MEANS OF EFFECTUATING" THE REQUISITE FELONIOUS INTENT FOR THE ROBBERY; HENCE, RONK'S CONVICTION FOR ARMED ROBBERY MUST ALSO BE REVERSED BECAUSE OF THE TRIAL COURT'S INSTRUCTIONAL ERROR

This Court has asked for briefing on whether its "analysis of the trial judge's denial of the defendant's imperfect self-defense instruction should relate to the defendant's armed robbery conviction as well as his capital murder conviction." For the reasons set forth below, Ronk respectfully submits that the answer to this question is "Yes."

Ronk was indicted in a two count indictment. Count I charged capital murder in the course of an arson. Count II charged Ronk with armed robbery alleging that Ronk took, stole, and carried away certain enumerated property of Michelle Craite "by violence to the person of Michelle Lynn Craite, by the exhibition of a deadly

weapon, to-wit, a knife." (C.P. 11-12, R.E. Tab 1). The armed robbery instruction tracked the language of the indictment. (C.P. 225-26).

There is no dispute that the only "violence to the person of Michelle Lynn Craite" that the State relied upon to prove the violence element of the robbery charged in Count II was the same act of violence that the State relied upon to prove the homicide element of the capital murder charged in Count I: the stabbing that resulted in Craite's death. (Ex. S-51, Tr. 499-501). Ronk attempted to defend by asserting, among other things, that the stabbing was at most the lesser included offense of imperfect self-defense manslaughter. [1] The question being briefed here, as well as several already covered in the parties' principal briefing, arises out of the trial court's refusal of Ronk's request, in aid of that defense, to instruct on imperfect self-defense manslaughter. (Instruction D-18, C.P. 256-57, Tr. 623).

Given that that the only act of violence supporting the robbery charge was

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[1] Both the State and Ronk, in order to establish their respective positions, relied entirely on Ronk's account to his new girlfriend Heather Hindall of how that particular act of violence took place:

> I told her [Craite] I was leaving and why I was leaving. I was coming to see you [Hindall] and ask you to be my wife. She completely lost it, she slapped me, and I walked away. Then she came at me with my knife and I took it away. It was not until she told me she's going to get her shotgun and kill me that I lost it and I went after her with the knife I had taken from her.

(Ex. S-51, fourth page) (letter to Hindall). *See also* (Tr. 499-501) (testimony of Hindall concerning oral statement made by Ronk), (Tr. 356, 408) (testimony of investigating officers and friends of decedent confirming presence in home, though not in bedroom, of two shotguns). The State, of course, relied upon Ronk's admission that he "went after her with the knife" to establish the killing element of the capital murder and the use of violence element of the robbery. Ronk, on the other hand, relied upon his assertions that Craite had "slapped me," "c[o]me at me with the knife," and "told me she's going to get her shotgun and kill me" prior to his stabbing her in order to establish his alternative defenses that the stabbing was done in justifiable self -defense or, if not justifiable, was an act of at most manslaughter.

the same stabbing as resulted in Craite's death, it was error not only in relation to the capital murder conviction, but also in relation to the robbery conviction for the trial court decline to instruct on imperfect self-defense manslaughter. This is because robbery is a specific-intent crime. *Thomas v. State*, 278 So. 2d 469, 472 (Miss. 1973); *see also Pierce v. State*, 860 So. 2d 855, 860 (Miss. Ct. App. 2003). Had the jury convicted Ronk of imperfect self-defense manslaughter, it would necessarily have determined that Ronk had an intent inconsistent with the specific intent required for robbery. That, the very least, "call[s] into question [the defendant's] intent in taking the property," and, indeed, may preclude the existence of the specific intent for robbery altogether. *Wales v. State*, 73 So. 2d 1113, 1124-1125 (Miss. 2011).

Ronk therefore respectfully submits that as a result of the failure to instruct on imperfect self-defense manslaughter, this Court must reverse both the capital murder and armed robbery convictions, and remand for a new trial on both counts of the indictment.

i. Robbery is a specific intent crime that requires that the force or threat of force be made "as a means" of effectuating the specific intent to take and carry away property.

In order to convict Ronk of armed robbery, the prosecution would be required to show that the force used was intended as a means to permanently deprive Craite of her property. *Williams v. State*, 590 So. 2d 1374, 1379 (Miss. 1991); *see also United States v. Young*, 282 F.3d 349, 353 (5th Cir. 2002) (noting that ignorance of fact does not defeat a specific-intent allegation as defendant acts with specific intent

when he acts with a deliberate goal in mind); *United States v. Lavernge*, 805 F.2d 517, 523 (5th Cir. 1986) (holding that because specific-intent crimes require deliberation to achieve a specific result, "a finding of specific intent to deceive categorically excludes a finding of good faith"); *Hydrick v. State*, 246 Miss. 448, 452, 150 So. 2d 423, 425 (1963) ("[w]here a crime consists of an act, combined with specific intent, the intent is just as much an element of the crime as the act"). *See generally Macon v. State*, 295 So. 2d 742, 745 (Miss. 1974) (relying on *Woodall v. State*, 234 Miss. 759, 107 So. 2d 598 (1958) (concluding that specific-intent crimes encompass essentials not required in general-intent crimes; here, for example, evidence that the weapon alleged to have been used could possibly cause the alleged injury is required). [2]

This Court has specifically noted: "Robbery has three essential elements: "(1) felonious intent, (2) *force or putting in fear as a means of effectuating the intent*, and (3) by that means taking and carrying away the property of another from his person or in his presence." *Veazy v. State*, 113 So. 3d 1226, 1229 (Miss. 2013) (citing *Croft v. State,* 992 So. 2d 1151, 1157 (Miss.2008)) (emphasis added). *See also*

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[2] Stand-alone robbery is a unitary crime which "consists of an act, combined with a specific intent."*Hydrick v. State*, 246 Miss. 448, 452, 150 So. 2d 423, 425 (1963). Robbery based capital murder, which is not at issue in this matter, in any event, because the capital murder charge here was premised on arson, not robbery, is, in effect, two separate crimes: an "unlawful homicide with or without intent to kill" and a "robbery," that are linked by a "causal nexus" between the two. *Fisher v. State,* 481 So. 2d 203, 212 (Miss. 1985). Hence, where the charge being considered is robbery standing alone, the "one continuous transaction" doctrine developed in connection with robbery capital murder proof does not come into play. That doctrine addresses establishing the requisite "causal nexus" between the homicide and the robbery for purposes of robbery-based capital murder, not the elements of either individually. *See Batiste v. State*, 121 So. 3d 808 (Miss. 2013); *Gillett v. State*, 56 So. 3d 469 (Miss. 2010).

Clayton v. State, 759 So. 2d 1169 (Miss. 1999). In order to convict a defendant of robbery, the State must show that the force (or fear) in question was the means by which the taking occurred. In other words, there must be an epistemic connection between the taking and the force.

This principle is longstanding in Mississippi law. Over sixty years ago, this Court noted;

> [T]he three essential elements of the offense [of robbery] are felonious intent, force or putting in fear as a means of effectuating the intent, and by that means a taking and carrying away of the property of another from his person or in his presence. *In the nature of things, all these elements must concur in point of time, else the act done is not rounded out to the full measure of the capital felony*. If force is relied on in proof of the charge, *it must* be the force by which another is deprived of, and the offender gains, the possession. If putting in fear is relied on, it must be the fear under duress of which the possession is parted with. The taking, as it has been expressed, must be the result of the force or fear; and force or fear which is a consequence, and not the means, of the taking, will not suffice.

Register v. State, 97 So. 2d 919, 921-22 (1957) (emphasis added). The *Register* Court ultimately concluded that "personal property of another must be taken from the person or from the presence of such other person either by violence or by putting such person in fear of immediate injury to his person by the exhibition of a deadly weapon, and that such act must be the *means* by which the personal property of another shall have been taken. *Id.* (emphasis added). [3]

[3] While *Register* focuses on the timing of the taking as it relates to a use of force, the principles espoused in *Register* signify a clear connection between the elements of force and taking. This requirement has been noted by cases such as *Veazy* and *Clayton*, noted above.

ii. ***If the jury had been properly instructed on imperfect self-defense manslaughter as a lesser included offense, and elected to convict of that crime, rather than of capital murder, it could not also find that the specific intent element necessary to convict of armed robbery was established.***

Had the jury been instructed on imperfect self-defense manslaughter, it could, under the facts of record, properly have found that to be the homicide of which Ronk was guilty under Count I. Had that been its verdict, it would necessarily have found that Ronk's only intent in stabbing Craite was a *bona fide*, but unfounded, belief that he was stabbing Craite as a necessary means to prevent his own death or great bodily harm at her hands. *See Wade v. State*, 748 So. 2d 771, 775 (Miss. 1999); Miss. Code Ann. § 97-3-35.

A verdict of imperfect self-defense manslaughter would thus, by its very nature, negate the intent element for the armed robbery and pretermit and preclude any finding by the jury with respect to Count II that the stabbing was done as a "means" by which Ronk was executing a felonious intent to steal from Craite. *Register,* 97 So. 2d at 921-22. In other words, since the scienter accompanying the stabbing is fully accounted for by the *bona fide* but unreasonable belief that the killing was necessary to defend himself, that stabbing in imperfect self-defense could not amount to a force effectuating the intent to steal. *See Veazy* 113 So. 3d at 1229. [4] Alternatively, even if the scienter for imperfect self-defense manslaughter

[4] In this respect, a verdict of imperfect self -defense manslaughter on Count I would have operated relative to Count II in the same way as an acquittal on the basis of justifiable self-defense would have done. The only difference was that if the jury had acquitted of capital murder on that basis, the *bona fide* belief the killing was necessary to prevent his own death or great bodily harm would have been found to have been objectively *reasonable*, rather than unreasonable. *See* C.P. 230, *Heidel v. State*, 587 So. 2d 835 (Miss. 1991).

were not entirely preclusive of a co-existing intent to steal associated with that force, whether it did so presents a jury question that requires reversal and remand for a new trial on the armed robbery, as well. *See Wales* , 73 So. 3d at 1124-25.

As a consequence, the error in failing to instruct on imperfect self-defense manslaughter requires reversal of the armed robbery conviction as well as of the capital murder conviction, and this question must be decided in order to guide the trial court and the parties on remand.

It is also necessary to vindicate Ronk's fundamental rights to have his jury properly instructed on the elements of all crimes charged, and on all of the theories of defense supported in any way by the evidence. *Banyard v. State,* 47 So. 3d 676, 687 (Miss. 2010), *Brown v. State*, 39 So. 3d 890, 899 (Miss. 2010), *Williams v. State,* 797 So. 2d 372, 378 (Miss. Ct. App. 2001) (finding "a defendant has a constitutional right to a fair trial. That right necessarily embraces his right to have his theory of defense presented to the jury and to have the jury properly instructed on the law regarding that defense."). *See also Holmes v. South Carolina*, 547 U.S. 319 (2006); *Crane v. Kentucky*, 476 U.S. 683 (1986); *California v. Trombetta*, 467 U.S. 479, 485 (1984); *Boyde v. California*, 494 U.S. 370, 379 (1990) (citing *Mills v. Maryland*, 486 U.S. 367 (1988)), *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973)(all finding constitutional right to present a defense).

Moreover, to leave the armed robbery conviction in place upon reversal for failure to give the manslaughter instruction would also run afoul of Ronk's Sixth and Fourteenth Amendment rights to have his guilt or innocence determined by a

properly instructed jury, and not by presumption, *Sandstrom v. Montana*, 442 U.S. 510 (1979) or on the basis of judicial fact-finding. *Alleyne v. United States*, -- U.S. --, 133 S. Ct. 2151 (2013), *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

CONCLUSION

For the foregoing reasons, Ronk respectfully submits that this Court's analysis of the trial judge's denial of the defendant's imperfect self-defense instruction should relate to the defendant's armed robbery conviction as well as his capital murder conviction. He further respectfully submits that both convictions should therefore be reversed due to the erroneous denial by the trial court of Ronk's requested imperfect self-defense manslaughter instruction, and this matter remanded to the Circuit Court of Harrison County for a new trial on all counts charged.

Respectfully submitted,
Timothy Robert Ronk, Appellant

By: /s/ Justin T. Cook

Justin T. Cook
Miss. Bar No. 102622
OFFICE OF STATE PUBLIC DEFENDER
INDIGENT APPEALS DIVISION
Post Office Box 3510
Jackson, MS 39207

Alison Steiner
Miss Bar No. #7832
OFFICE OF STATE PUBLIC DEFENDER
CAPITAL DEFENSE COUNSEL DIVISION
239 N. Lamar St. Suite 604
Jackson MS 39201

Attorneys for Appellant

CERTIFICATE OF SERVICE

I, Justin T. Cook , counsel for the appellant, hereby certify that I have this day filed by means of the electronic case filing system the foregoing Brief of the Appellant, pursuant to Mississippi Rule of Appellate Procedure 25 by which immediate notification to the following ECF participants in this cause is made:

Melanie Dotson Thomas
Office of the Attorney General
P.O. Box 220
Jackson, MS 39205

In addition, the following non-ECF participants are served by United States Mail, first class first class postage prepaid:

Mr. Timothy Robert Ronk
Unit 29-J
Mississippi State Penitentiary
Parchman, MS 38738

Hon. Lisa P. Dodson
Presiding Judge
P.O. Box 1461
Gulfport, MS 39502

Joel Smith, Esq.
District Attorney
P.O. Box 1180
Gulfport, MS 39502

THIS the 12th day of December, 2013

/s/ Justin T. Cook
Justin T. Cook, Miss Bar #102622