IN THE SUPREME COURT OF MISSISSIPPI

TIMOTHY ROBERT RONK **APPELLANT**

v. **No. 2011-DP-410-SCT**

STATE OF MISSISSIPPI **APPELLEE**

SECOND SUPPLEMENTAL BRIEF OF THE APPELLANT

Filed pursuant to order entered July 10, 2014

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

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases

Statutes and Constitutional Provisions

Treatises

QUESTIONS PRESENTED FOR SUPPLEMENTAL BRIEFING

1. Does any statute establish the elements of manslaughter based on a claim of imperfect self-defense manslaughter?

2. Does imperfect self-defense manslaughter amount to a judicially created criminal offense?

3. If imperfect self-defense manslaughter amounts to a judicially created criminal offense, should this Court hold it unconstitutional, and abolish it?

4. If imperfect self-defense manslaughter is a crime supported by a statute, what evidence may support a jury's concurrent conclusion that the defendant's use of force was subjectively reasonable and objectively unreasonable?

PROCEDURAL HISTORY

On July 13, 2012, Ronk filed his principal brief before this Court. The State filed its brief 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. This Court issued its Order requesting supplemental briefing on November 12, 2013.

Ronk filed his Supplemental Appellant's Brief on December 12, 2013. The State filed its supplemental brief on December 17, 2013. Ronk filed his Supplemental Reply Brief on December 23, 2013.

On July 10, 2014, this Court requested supplemental briefing on the above-listed issues.

SUPPLEMENTAL ARGUMENT

Issue One: This Court has long held that the offense of imperfect self-defense manslaughter has a firm statutory basis in the Mississippi Code.

"The killing of a human being, without malice, in the heat of passion, but in a cruel or unusual manner, *or* by the use of a dangerous weapon, without authority of

law, and not in necessary self-defense, shall be manslaughter." Miss. Code Ann. § 97-3-35 (West) (emphasis added). This Court has held that this statute must be read in the disjunctive, thereby creating *two* distinct theories of manslaughter: "heat of passion," and what has been termed by this Court as "imperfect self-defense" manslaughter. *Lanier v. State*, 684 So. 2d 93, 97 (Miss. 1996).[1]

The Mississippi Code also permits both the State and the defendant to advance either or both theories of manslaughter as a lesser-included offense to the crimes of murder or capital murder. Miss. Code Ann. § 97-3-19(3). Accordingly, this Court has recognized the State's right to advance either theory offensively, whether as a principal charge or as a lesser-included offense. This usually occurs when the State desires to advance a basis for criminal liability where the charged offense is murder or capital murder, but evidence exists that could negate malice thus preventing a valid murder conviction. *See, e.g., Wade v. State*, 748 So. 2d 771, 773 (Miss. 1999). Similarly, this Court has long endorsed the defendant's right to employ either theory of manslaughter, but only when the evidence supports doing so. *See, e.g. Evans v. State,* 109 So. 3d 1044, 1049 (Miss. 2013) (finding error in trial court's refusal of funding for an expert to assist in establishing imperfect self-defense manslaughter in capital murder prosecution); *Batiste v. State*, 121 So. 3d 808 (Miss. 2013) (considering defendant's claim of instructional error under both

[1] Mississippi Code section 97-3-35 is commonly referred to as Mississippi's "heat of passion" manslaughter statute. *See, e.g., Nolan v. State*, 61 So. 3d 887, 903 (Miss. 2011) ("our heat[ ]of[ ]passion statute[.]"). While section 97-3-35 contains the heat of passion language, it also is the basis for Mississippi's long-followed imperfect self-defense manslaughter offense/defense.

theories on the basis of a proffered single manslaughter instruction incorporating both clauses of § 97-3-35.)

Imperfect self-defense manslaughter, and its statutory basis, is not a doctrine of recent vintage. It has deep-running roots in this State's jurisprudence.[2] Almost a century ago, this Court noted the existence of both theories of manslaughter in the statutory predecessor to Mississippi Code Annotated section 97-3-35:

> There are ... [two] theories under which the appellant could be guilty of manslaughter: First, that he killed the deceased "in the heat of passion, without malice, by the use of a deadly weapon, without authority of law, and not in necessary self-defense" . . . second, that he killed the deceased without malice, under the bona fide belief, but without reasonable cause therefor, that it was necessary for him so to do in order to prevent the appellant from inflicting death or great bodily harm upon him.

Williams v. State, 127 Miss. 851, 90 So. 705, 706 (1921).

Sixty-four years after the *Williams* decision, this Court considered, with explicit reference to the language of Section 97-3-35, whether a theory of imperfect self-defense manslaughter had no statutory basis. Its answer was clearly, plainly, and unequivocally "no:"

> While it was perhaps once arguable that this second theory of manslaughter stated in *Williams* has no designated statutory base, *Perkins v. State,* 359 So. 2d 1389 (Miss. 1978), may only be understood as holding to the contrary, as providing that *both* theories of manslaughter as articulated in *Williams* are based upon the heat of passion statute. 359 So. 2d at 1391; *see also Hartfield v. State,* 176 Miss. 776, 783-84, 170 So. 531, 533 (1936) (citing *Williams*); *Ransom v.*

[2] By the same token, as is discussed more fully below in connection with the Court's second question presented for supplemental briefing, imperfect self-defense manslaughter is not merely a relic of the past, either. This Court has acknowledged, and even relied upon, its continuing existence in several recently decided matters in addition to the instant one. See, e.g., *Evans v. State,* 109 So. 3d 1044 (Miss. 2013); *Batiste v. State*, 121 So. 3d 808 (Miss. 2013)*;Young v. State*, 99 So. 3d 159 (Miss. 2012).

> *State,* 149 Miss. 262, 267, 115 So. 208, 210 (1928) (embracing the logic of *Williams*).

Cook v. State, 467 So. 2d 203, 207 (Miss. 1985).

The Court in *Cook* did not, however, look at Section 97-3-35 standing alone in arriving at this conclusion. It also relied upon Mississippi's justifiable homicide statute to undergird the statutory basis for the crime of imperfect self-defense manslaughter. The Court stated that "[t]he second variety of Section 97-3-35 manslaughter *is best understood in contradistinction to our law regarding self-defense*." *Id.* at 207 and n. 1 (citing to Miss. Code Ann. § 97-3-15(f), containing identical language on justifiable self-defense to that now codified as Miss. Code Ann. § 97-3-15(1)(f)) (emphasis added).

Any ambiguity about whether that phrasing meant that this Court was finding all aspects of the crime of imperfect self-defense manslaughter as created by statute, was also dispelled by *Cook*. The *Cook* opinion describes how that "contradistinction" serves not merely to "understand" but also to define the statutory crime of imperfect self-defense manslaughter:

> Our self-defense statute in effect at that time Cook shot Chandler, Miss. Code Ann. § 97-3-15(f) (1972), provides: The killing of a human being by the act, procurement, or omission of another shall be justifiable ... [w]hen committed in the lawful defense of one's own person or any other human being, where there shall be *reasonable* ground to apprehend a design to commit a felony or to do some great personal injury, and there shall be imminent danger of such design being accomplished. [emphasis added]. The actor's apprehension must be *objectively* reasonable before his homicide is justified. *See Robinson v. State*, 434 So. 2d 206, 207 (Miss. 1983). Where the actor's apprehension is only *subjectively*, in his or her own mind, reasonable, the homicide is Section 97-3-35 manslaughter. In the oft-quoted language of the *Williams* case, the homicide is manslaughter where the

> defendant acted "under the bona fide belief [of necessity], without [objectively] reasonable cause therefor. . . ." 127 Miss. at 854, 90 So. at 706.

Cook, 467 So. 2d at 207(emphasis in original, footnote omitted).

Hence, *Cook* makes it clear that the "elements" of imperfect self -defense manslaughter are found by reading the manslaughter statute *in pari materia* with the statute establishing self-defense as a justification for homicide. *Cook*, 467 So. 2d at 207. The manslaughter statute defines the elements of the homicide itself – including that it *not* be in "necessary self-defense." Miss. Code Ann. § 97-3-35. The justifiable homicide statute establishes the reasonableness standard that distinguishes "necessary" self -defense, which justifies the homicide altogether, from "unnecessary" self-defense, which warrants a reduction of culpability from murder to manslaughter, but does not support complete justification. *See Hart v. State*, 637 So. 2d 1329, 1339 (Miss. 1994) (citing *Cook* in support of this distinction, but affirming conviction of murder where the only options for the jury were necessary self-defense acquittal or conviction of murder because "[n]o manslaughter instruction was requested.").

But looking to multiple statutes to establish the elements of a crime is not unique to imperfect self-defense manslaughter. The elements of many crimes, including those of the arson-based felony capital murder charged in the instant case, are derived only by reading multiple statutes together. *See Harrell v. State*, 134 So. 3d 266, 269-75 (Miss. 2014) (reiterating that elements of felony capital murder are derived from both the capital murder statute and the statute

criminalizing the undergirding felony).

Interpreting the meaning of the "and not in necessary self-defense" language in the manslaughter statute requires this Court to determine not only what conduct is protected from criminal liability under the statute defining justifiable self-defense homicide, but also what conduct is *not* subsumed within it. Such a determination is not a judicial "creation" of a crime that does not otherwise have a statutory existence. It is simply this Court's discharge of its most fundamental duty of interpreting the statutory language that creates the crime. *Marbury v. Madison*, 5 U.S. 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule.")

Moreover, as here, when the statute being interpreted is a criminal statute, this Court must interpret such statutes in a way that resolves all doubts and ambiguities in favor of the accused. *Brown v. State*, 102 So. 3d 1087, 1089 (Miss. 2012) (citing *Coleman v. State,* 947 So. 2d 878, 881 (Miss. 2006); *Watts v. State,* 733 So. 2d 214, 240 (Miss. 1999); *McLamb v. State,* 456 So. 2d 743, 745 (Miss. 1984); *State v. Russell,* 358 So. 2d 409 (Miss. 1978); *Carter v. State,* 334 So. 2d 376 (Miss. 1976); *Terry v. State,* 172 Miss. 303, 160 So. 574, 574 (1935)). This is not "merely a convenient maxim of statutory construction. Rather, it is rooted in fundamental principles of due process which mandate that no individual be forced to speculate, at peril of indictment, whether his conduct is prohibited." *Dunn v. United States,* 442 U.S. 100, 112, 99 S. Ct. 2190, 60 L.Ed.2d 743 (1979) (internal citations omitted).

Issue Two: Imperfect self-defense manslaughter is not a judicially created criminal offense.

1. Stare Decisis controls.

Above all, the doctrine of *stare decisis* controls this issue. This doctrine is not new to this Court. In 1914, this Court held that "[a] former decision of this court *should not be departed from*, unless the rule therein announced is not only manifestly wrong, but mischievous." *Forest Prod. & Mfg. Co. v. Buckley,* 107 Miss. 897, 899, 66 So. 279 (1914) (emphasis added). This Court has concluded that precedent should be overruled only when it is *erroneous*, *pernicious*, *impractical*, or is "*mischievous* in its effect, resulting in detriment to the public." *State Ex Rel. Moore v. Molpus,* 578 So. 2d 624, 635 (Miss. 1991) (emphasis added).

Imperfect self-defense manslaughter is not a rarity in the trial courts of this State. As noted above, it has been commonplace in this State for nearly a century. In some cases, this Court has considered whether a conviction of manslaughter on an imperfect self-defense manslaughter theory was proper as a statutorily recognized lesser-included offense in a murder or capital murder indictment. Miss. Code Ann. § 97-3-19(3). *See, e.g., Wade v. State*, 748 So. 2d 771, 773 (Miss. 1999) (reversing murder conviction, declining Wade's claim that evidence required finding of justifiable self-defense as a matter of law, and making direct remand to the circuit court for sentencing on manslaughter based on theory of imperfect self-defense); *Cook*, 467 So. 2d at 208-09 (upholding conviction of manslaughter on basis of State-sought imperfect self-defense manslaughter instruction because "the jury could reasonably have concluded that a swaggering drunk such as Chandler

wielding the pool cue simply did not present Cook with a life threatening situation" notwithstanding defendant's professed subjective belief that it did); *Johnson v. State*, 346 So. 2d 927, 928 (Miss. 1977) (rejecting claim that repelling attempted sodomy *necessarily* justified use of lethal force within meaning of self-defense statute, and upholding manslaughter conviction returned by jury upon state-sought lesser included offense instruction). This Court has also frequently considered, without ever questioning the existence of the underlying offense, or the necessity of instructing upon it *if* warranted by the facts, and, more frequently as it is here, when an instruction is sought to support a lesser-offense theory of defense to charges of murder or capital murder prosecution.

For example, this Court *unanimously* reversed a conviction for failure to provide funds for a mental health expert because that expert's testimony was necessary to present a defendant's imperfect self-defense theory of defense. *Evans v. State,* 109 So. 3d 1044, 1049 (Miss. 2013). *Evans* is clear and unequivocal in its holding that a murder defendant has the right to assert his imperfect self-defense manslaughter theory of defense. Moreover, the United States Constitution *demands* he be afforded the opportunity to do so. *Id.* at 1048-49 (citing *Ake v. Oklahoma,* 470 U.S. 68, 80–81 (1985)). *Evans* goes beyond a mere tacit approval by this Court of the defense to a full embrace of all the fundamental rights necessary

for such a defense.[3] Obviously, such a holding leaves no doubt that imperfect self-defense manslaughter is constitutional.

Likewise, a year earlier in *Young v. State*, as in the unanimous *Evans* decision, neither the majority nor the dissent questioned the constitutionality of or the statutory basis for a defendant's imperfect self-defense manslaughter theory. *Young v. State*, 99 So. 3d 159, 160-69 (Miss. 2012). Instead, the majority merely found that the facts in the case did not warrant such instruction. *Id.* To the extent that there was disagreement between the majority and dissent in *Young,* it was about when the *facts* would justify the granting of such an instruction. *Compare Id.* at 166 ("th[e] evidence [in this case] provides no evidentiary basis for the *bona fide* but unfounded belief required for an imperfect-self-defense instruction.) *with Id.* at 169 (Dickinson, PJ, dissenting, Kitchens, Chandler and King, JJ. joining) (finding evidence sufficient to support that instruction, and noting that it was "difficult to

---

[3] *Evans* clearly reiterates that this Court's recognition of a criminal defendant's right to employ imperfect self-defense, or any other theory of defense supported by the evidence, falls under the aegis of a criminal accused's fundamental right to present a defense:

> "Dante argues that the defense theory of imperfect self-defense required an expert on PTSD and that the trial court's refusal of funds for such an expert was an abuse of discretion and reversible error. Dante further argues that he demonstrated an actual need for an expert in PTSD and that the trial court's denial of funds was a denial of due process. We agree."

Evans v. State, 109 So. 3d 1044, 1048 (Miss. 2013) *See also Brown v. State*, 39 So. 3d 890, 899 (Miss. 2010), *Banyard v. State*, 47 So. 3d 676, 687 (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."); *Boyde v. California*, 494 U.S. 370, 379 (1990) (citing *Mills v. Maryland*, 486 U.S. 367 (1988); *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); *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973) (all recognizing the right to present a defense as "fundamental.").

8imagine a fact scenario in which a defendant is entitled to a self-defense instruction but not entitled to an imperfect-self-defense instruction.") [4]

2. *Neither this Court's jurisprudence, nor any legislative action taken in the years since Cook v. State was decided renders Cook and its progeny erroneous, pernicious, impractical, mischievous in its effect, or detrimental to the public.*

This Court's jurisprudence on imperfect self-defense is not random; rather, it reflects consistent reading and application of the manslaughter statute. The approach followed by this Court is not manifestly wrong. It is certainly not erroneous, pernicious, impractical, mischievous in its effect, or detrimental to the public. *State Ex Rel. Moore,* 578 So. 2d at 635.

Notably, the legislature has had nearly a century to respond legislatively to any perceived error in this Court's repeated interpretation of the manslaughter statute, but has not done so. This inaction by the legislature shows empirically that the legislative intent of the manslaughter statute is accurately reflected by *Williams, Cook,* and their progeny.

Ronk is aware of neither an opinion from this Court, nor any dissenting opinion, that has called into question the ubiquitous use of imperfect self-defense manslaughter both offensively and defensively in this state's trial courts. No decision, or dissenting opinion in any appeal that involved imperfect self-defense manslaughter has questioned or impugned the reasoning of *Lanier*, *Williams* and

[4] In his briefing, Ronk echoes the *Young* dissenters' view on this point and urges that this Court recognize it. However, that question need not be addressed in order to accord Ronk relief in the instant matter. As is discussed more fully below in connection with the Court's fourth question presented for supplemental briefing, and in Ronk's principal briefing, the evidence on this point in the instant case if believed, presents the classic imperfect self-defense scenario. See pp. 27-34, below.

Cook. Those cases found that the language of section 97-3-35, read together with the justifiable homicide statues creates two separate offenses, of which imperfect self-defense manslaughter is one.

No separation of powers jurisprudence decided after *Cook* or *Lanier* has ever questioned this Court's most basic power, as the court of last resort in Mississippi, to construe the language of Mississippi statutes when deciding cases. *Marbury,* 5 U.S. at 177. Nor is there any indication that our legislature responded to any perceived error in this Court's construction on this point in *Lanier* or *Cook.* It has made no alteration to 97-3-35 at all since the *Cook* or *Lanier* decisions. Where the legislature has modified the justifiable homicide statute, it has *expanded* the circumstances in which self-defense applies, and established presumptions regarding reasonableness in those circumstances. *See, e.g,* Miss. Code Ann. § 97-3-15(3)-(4) (amended by Laws 2006, Ch. 492, §1, eff. July 1, 2006). None of these changes affect the present case.

Finally, even if this Court were to decide that there was some basis for departing from *stare decisis* adherence to *Lanier, Cook, and Williams*, the abolition of the offense of imperfect self-defense manslaughter as solely "judicially created" is not its only option. The Mississippi Code also contains a more general manslaughter prohibition whose language on its face would not exclude the imperfect self-defense theory. Miss. Code Ann. § 97-3-47. Admittedly, the "relocation" of imperfect self-defense manslaughter from § 97-3-35 to § 97-3-47 would entail as much re-

construing of the Code as removing it altogether would.[5] However, that would not be as radical or potentially unconstitutional as completely abolishing a crime, and its defensive use, in the absence of legislative action or any prior jurisprudence signaling that this Court was abandoning a theory of defense.

Issue Three: Imperfect self-defense manslaughter is not a judicially-created criminal offense, and even if it were, its abolition would present significant constitutional problems.

For the reasons previously discussed, imperfect self-defense manslaughter is not a "judicially created crime." Hence, even to the extent that judicially-created crimes may be unconstitutional under certain circumstances, those circumstances are not present in the instant case. But even if this Court eradicated a century of previously unquestioned case law and held that the definition of imperfect self-defense manslaughter is not derived from § 97-3-35, it does not follow that the crime itself must be abolished as unconstitutional. Indeed, it is doubtful that such action could itself pass constitutional muster.

To abolish the defensive use of imperfect self-defense manslaughter as a

---

[5] Section 97-3-47 has consistently been construed to apply only to crimes that fall under the common law doctrine of "involuntary" manslaughter. *Craig v. State*, 520 So. 2d 487, 491 (Miss. 1988); *Miller v. State*, 733 So. 2d 846, 849–50 (Miss. Ct. App. 1998). *See also*, more recently, *Nolan v. State*, 61 So. 3d 887 (Miss. 2011) (plurality opinion affirming conviction of manslaughter under indictment for § 97-3-35 manslaughter and reversing Court of Appeals use of § 97-3-47 to do so instead.) In *Nolan*, the plurality did not reach the question of the scope of § 97-3-47 at all because it found that the conviction fell within the traditional heat of passion manslaughter theory prohibited by the first clause of § 97-3-35. 61 So. 3d at 893. The concurring opinion, citing *Lanier,* supported affirming the conviction under the second clause of § 97-3-35. It also expressly found that §97-3-47 was applicable only to involuntary manslaughter). *Id.* at 897-99 (Randolph, J., concurring) (citing *Craig*, 520 So. 2d at 491, *Miller*, 733 So. 2d at 849-50). The dissent concluded that the conviction could not stand under § 97-3-35 or § 97-3-47, but agreed with the concurrence that § 97-3-47 codified only involuntary manslaughter. *Nolan* at 903-04 (Carlson, P.J. dissenting) (citing to same portions of *Craig* and *Miller*).

lesser-included offense option to murder or capital murder and affirm Ronk's conviction as a consequence would violate at least Ronk's own constitutionally guaranteed right to present a defense. His detrimental reliance on a then-valid law as a theory of defense alone requires a new trial in which he may devise a defense with or without such reliance. To abolish its existence as a lawful theory of criminal liability would also call into question the validity of *any* conviction of manslaughter obtained by plea or trial under Mississippi Code Ann. § 97-3-35. That would open at least floodgates of litigation, if not the doors of our correctional institutions.

1. *Even if the crime of imperfect self-defense manslaughter were "judicially-created," it is not necessarily facially unconstitutional.*

As discussed above, nothing this Court has done with respect to reading section 97-3-35 to include an imperfect self-defense theory of manslaughter has exceeded its fundamental right to construe statutory and constitutional enactments and "say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803). In a legal system founded on the common law, there is nothing unconstitutional *per se* about judicially created crimes.

The distinguishing feature of the common law is that it is developed through the judicial determination of disputes, and not, as in jurisdictions controlled by civil law principles, by codes enacted by monarchial, executive, or legislative authority without reference to particular disputes. Creating legislatively enacted crimes does not automatically abolish pre-existing common law crimes. In common law jurisdictions courts do retain the power to engage in "acts of common law judging," unless specifically repealed by statutory enactment. *Rogers v. Tennessee*, 532 U.S.

451, 461 (2001) (holding that whether such judicial acts "be characterized as 'making' or 'finding' the law, [they] are a necessary part of the judicial business in States in which the criminal law retains some of its common law elements.")

Many crimes, including manslaughter, were thus initially "judicially created" at common law. *Taylor v. State*, 452 So. 2d 441, 445-46 (Miss. 1984). They are not *per se* unconstitutional because of that. Indeed, Mississippi recognizes the continuing existence of common law crimes, both by statutory enactment and in this Court's jurisprudence. *See* Miss. Code Ann. § 99-1-3; *State ex rel. Maples v. Quinn,* 217 Miss. 567, 64 So. 2d 711 (1953). The only remaining issue is whether the punishment for manslaughter is prescribed with sufficient statutory specificity to make it constitutional to impose a sentence for it as a common law crime. Mississippi statute clearly does that. Miss. Code Ann. § 97-3-25.

Of course, punishing people at all for *newly* judicially-created crimes *may* be a violation of due process because of the lack of previous notice of the criminality of the conduct "with sufficient definiteness that ordinary people can understand what conduct is prohibited." *Kolender v. Lawson*, 461 U.S. 352, 357 (1983) (citing *Village of Hoffman Estates v. Flipside*, 455 U.S. 489 (1982); *Smith v. Goguen*, 415 U.S. 566 (1974); *Grayned v. City of Rockford*, 408 U.S. 104 (1972); *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972); *Connally v. General Construction Co.*, 269 U.S. 385 (1926)). Moreover, whether judicially or legislatively created, any particular criminal offense may be deemed unconstitutional if it is vague or overbroad in what it criminalizes, particularly where it attempts to criminalize conduct that was *not*

recognized as prohibited by some common law doctrine. *See, e.g.*, *Skilling v. United States*, 561 U.S. 358, 408 (2010) (limiting reach of "honest services" act to conduct, such as bribery, previously recognized as breaching common law fiduciary principles).

Lack of notice or vagueness was not an issue in the instant case, where Ronk sought to rely upon imperfect self-defense manslaughter as a lesser-included offense of capital murder. Indeed, Ronk had an affirmative constitutional right to present that defense. *See Evans v. State,* 109 So. 3d 1044, 1049 (Miss. 2013) (requiring allowance of expert assistance if needed to make defensive use of imperfect self-defense manslaughter). *See generally*, *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); *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973) (all recognizing the right to present a defense as "fundamental").

Nor is there any general problem of notice to either the State or any defendant regarding the fact that manslaughter is a lesser included offense to any variety of murder, including capital murder.

This Court has consistently held that an indictment for murder includes the lesser-included charge of manslaughter:

> The long-standing common-law rule is that an indictment for murder includes all lower grades of felonious homicide. Under this general rule, "on an indictment charging murder generally an accused may be found guilty of manslaughter ... and, where manslaughter has been divided by statute into degrees, of any of the statutory degrees." 42 C.J.S. Indictments and Informations, § 280 (1944). This Court has repeatedly applied the general rule and upheld convictions of manslaughter obtained under an indictment for murder. *Wells v. State,*

> 305 So. 2d 333 (Miss. 1974); *Roberson v. State,* 257 So. 2d 505 (Miss. 1972); *King v. State,* 251 Miss. 161, 168 So. 2d 637 (1964); *Calicoat v. State,* 131 Miss. 169, 95 So. 318 (1922 [1923]).

State v. Shaw, 880 So. 2d 296, 304 (Miss. 2004) (quoting *Kelly v. State,* 463 So. 2d 1070, 1073 (Miss. 1985). *See also* Miss. Code Ann. § 97-3-19(3).

And, as is discussed more fully in the responses to Questions 1 and 4, there is nothing vague or overbroad about what conduct constitutes manslaughter on a theory of imperfect self-defense. This Court has clearly enunciated the elements of that crime in multiple decisions, and has a large body of jurisprudence setting forth what does, and does not, establish those elements. Juries, therefore, can be clearly instructed on its elements as a matter of law, and trial courts have ample guidance in determining whether there is any evidence to support doing so. Indeed, the legal standard for manslaughter as a lesser-included offense is so clear that this Court has not hesitated to directly remand for entry of a manslaughter conviction on an imperfect self-defense theory where the facts, as a matter of law, supported that conviction. *See, e.g., Wade v. State*, 748 So. 2d 771, 773 (Miss. 1999).

2. *Even if this Court declares imperfect self-defense manslaughter unconstitutional, the State and Federal Constitutions nonetheless require that Ronk be given a new trial because he detrimentally relied on the existence of that crime as his theory of defense.*

The questions presented for supplemental briefing also provoke Constitutional concerns about how a judicial elimination of imperfect self-defense manslaughter would affect Ronk specifically.

A defendant must be afforded due process of law and receive fair notice of "the nature and cause of the accusation." U.S. Const. amends. VI, XIV; Miss. Const.

art. 3, §§ 14, 26; *Gowdy v. State*, 56 So. 3d 540, 545 (Miss. 2010). Implicit in that guarantee is the notice of all potential defenses to the charge.

Accordingly, if this Court were find that imperfect self-defense is an improper charge, due process would nonetheless require that Ronk's conviction be reversed. Ronk proceeded to trial with a defense of lessened culpability under a theory of imperfect self-defense manslaughter. This theory has been commonplace in this State over the last century and has been supported by numerous decisions of this Court. Ronk's reliance on it in exercising his Constitutional right to trial and to defending on that theory was therefore thoroughly justified. Any abolition of it would represent a sea change in the law that could not have been anticipated. Elimination of that theory of defense on appeal would violate Ronk's right to a fair trial. Accordingly, if this Court eliminates the previously recognized defense on which Ronk relied, so too, for the reasons set forth below, must the Court reverse Ronk's conviction and grant him a new trial at which he is likewise entitled to present that defense.

The Due Process and *Ex Post Facto* Clauses of the United States Constitution protect common interests of fundamental fairness (through notice and fair warning) and the prevention of the arbitrary and vindictive use of the laws. *See, e.g., Rogers v. Tennessee*, 532 U.S. 451, 460 (2001); *Lynce v. Mathis,* 519 U.S. 433, 439-440, and n. 12 (1997).

The *Ex Post Facto* Clause, U.S. Const. Art. 1, § 10, cl. 1, by its own terms,

does not apply to decisions made by appellate courts. *Rogers*, 532 U.S. at 460.[6] However, the Due Process Clause of the Fourteenth Amendment does specifically prohibit retroactive application of any judicial construction of a criminal statute that is unexpected and indefensible by reference to the law which has been expressed prior to the conduct in issue. *Bouie v. City of Columbia,* 378 U.S. 347, 354 (1964).

Bouie concerned a sit-in demonstration at a drugstore in civil-rights era Columbia, South Carolina. Two African-American students sat at a booth at a lunch counter. After seeing them, a restaurant employee put up a "no trespassing sign" and asked the two to leave. *Id.* at 348. The two students were convicted of trespass. At the time, South Carolina's trespass statute prohibited the entry upon lands of another after notice from an owner or tenant. *Id.* at 349-50. The South Carolina Supreme Court construed the statute to prohibit not only entering the premises of another after receiving notice not to enter, but, also, remaining after receiving notice to leave. *Id.*

The *Bouie* Court found that when a judicial construction retroactively broadens the activities that make up a crime, it functions *precisely* like an *ex post facto* law. *Id.* at 354-55. The Court reversed the trespassing convictions, because an *ex post facto* application of that criminal statute to conduct not previously forbidden

[6] The United States Supreme Court has held that the purpose of the Ex Post Facto Clause is to assure that legislative acts "give fair warning of their effect and permit individuals to rely on their meaning until explicitly changed" and to restrict "governmental power by restraining arbitrary and potentially vindictive legislation." *Weaver v. Graham,* 450 U.S. 24, 28–29, 101 S.Ct. 960, 964, 67 L.Ed.2d 17 (1981) (footnote and citations omitted).

violated the Due Process Clause of the Fourteenth Amendment. *Id.*

Nearly forty years later, in *Rogers*, the Tennessee Supreme Court eliminated a common-law rule of law which prohibited murder prosecutions when the victim died a year and a day after the initial assault. The United States Supreme Court found that the *Ex Post Facto* Clause did not apply.[7] The *Rogers* Court explained that the retroactive abolition of the "year and a day rule" was not unconstitutional. The rule was "widely viewed as an outdated relic of the common law" and had been "legislatively or judicially abolished in the vast majority of jurisdictions recently to have addressed the issue." *Id.* at 462–463. Moreover, the rule "had only the most

---

[7] Justice Scalia passionately dissented in *Rogers*. Justice Scalia reasoned that there was no principled reason to distinguish between the process of lawmaking by a legislature and the process of lawmaking by common law courts. Justice Scalia noted that the Majority's holding was directly in conflict with the Framers' intent:

> What occurred in the present case, then, is precisely what Blackstone said-and the Framers believed-would not suffice. The Tennessee Supreme Court made no pretense that the year-and-a-day rule was "bad" law from the outset; rather, it asserted, the need for the rule, as a means of assuring causality of the death, had disappeared with time. Blackstone-and the Framers who were formed by Blackstone-would clearly have regarded that *change* in law as a matter for the legislature, beyond the *power* of the court. It may well be that some common-law decisions of the era in fact changed the law while purporting not to. But that is beside the point. What is important here is that it was an undoubted point of principle, at the time the Due Process Clause was adopted, that courts could not "change" the law. That explains why the Constitution restricted only the legislature from enacting *ex post facto* laws. Under accepted norms of judicial process, an *ex post facto* law (in the sense of a judicial holding, not that a prior decision was erroneous, but that the prior valid law is hereby retroactively *changed*) was simply not an option for the courts.

Rogers, 532 U.S. at 77 (Scalia, J. dissenting). Nothing prohibits this Court from adopting the well-reasoned dissent from *Rogers*. This Court's power to afford this State's citizen's more protection than offered by the United States Supreme Court should be strongly considered.

tenuous foothold" in Tennessee, having been mentioned in reported Tennessee decisions "only three times, and each time in dicta." *Id.*

Just last year, in *Metrish v. Lancaster*, 133 S. Ct. 1781, 185 L. Ed. 2d 988 (2013), the United States Supreme Court addressed due process as it relates to retroactive application of a judicial finding. The *Lancaster* Court denied a petitioner's claims of due process violation. However, *Lancaster* merely emphasized how difficult it is for petitioners to succeed under the AEDPA habeas standard. *Lancaster* does not articulate a rule for when the judicial decisions may be applied retroactively to expand criminal liability, especially in regard to defendants on direct appeal. Noticeably, the Supreme Court's description of Lancaster's petition is diametrically opposed to any retroactive application in Ronk's re-trial, were this Court to eliminate the oft-instructed and approved defense of imperfect self-defense manslaughter:

> This Court has never found a due process violation in circumstances remotely resembling Lancaster's case—*i.e.,* where a state supreme court, squarely addressing a particular issue for the first time, rejected a consistent line of lower court decisions based on the supreme court's reasonable interpretation of the language of a controlling statute. Fairminded jurists could conclude that a state supreme court decision of that order is not "unexpected and indefensible by reference to [existing] law.

Lancaster, 133 S. Ct. at 1792 (citations omitted). While the United States Supreme Court has not articulated where the line between *Rogers*, *Lancaster* and *Bouie* lies, Ronk contends that the elimination of imperfect self-defense manslaughter and Ronk's inability to assert that theory would violate his due process rights.

This Court has *never* called into question the appropriateness of imperfect

self-defense manslaughter. To the contrary, this Court has expressly resolved any question as to its appropriateness *Cook*, 467 So. 2d at 207. Nor has the legislative activity required this Court to reconsider its repeated holdings allowing for the defense of imperfect self-defense homicide in capital murder prosecutions.

3. *Declaring imperfect self-defense manslaughter unconstitutional because it is not specifically prohibited by § 97-3-35 would create a new rule of substantive law requiring at least review, and ultimately vacation of, many convictions obtained under that statute.*

Narrowing the scope of § 97-3-35 by excising the imperfect self-defense theory would create a new substantive rule of criminal law and procedure. In consequence, fundamental fairness and due process will cause some, if not most, pre-existing § 97-3-35 manslaughter convictions be set aside.

Obviously, any non-final manslaughter conviction, in which the court or jury used an instruction tracking the language of section 97-3-35, would have to be set aside immediately by whatever court had pending jurisdiction. *See Jones v. State*, 122 So. 3d 698, 701 (Miss. 2013) (quoting *Schriro v. Summerlin*, 542 U.S. 348, 351 (2004) for the long established principle that "[w]hen a decision of this Court results in a new rule, that rule applies to all criminal cases still pending on direct review.")

Moreover, because this would be a new rule that narrowed the scope of a criminal statute, it would have to be retroactively applied even to convictions and

sentences that were obtained by plea,[8] or which had already become final due to the absence of a timely direct appeal or affirmance, *Jones, supra* at 701 (following *Teague v. Lane*, 489 U.S. 288, 310 (1989), *Manning v. State*, 929 So. 2d 885, 900 (Miss. 2006)).

> "[S]ubstantive rules ... include[ ] decisions that narrow the scope of a criminal statute by interpreting its terms." [*Summerlin*] at 351–52, 124 S.Ct. 2519 (citing *Bousley v. United States*, 523 U.S. 614, 620–621, 118 S.Ct. 1604, 140 L.Ed.2d 828 (1998)).

Jones , supra at 702.

For all of the foregoing reasons, Ronk respectfully submits that it would be neither constitutional nor a wise matter of policy for this Court to suddenly set aside its century of unquestioned reliance upon the existence of imperfect self-defense manslaughter. It would certainly be a violation of Ronk's due process rights not to set his conviction aside even if it did so.

Issue Four: This Court has established clear legal and factual definitions of "subjectively reasonable" and "objectively reasonable" insofar as those concepts define imperfect self-defense manslaughter and distinguish it from justified homicide.

As matter of *fact,* a jury must be instructed on a theory of defense if there is some evidence, "no matter how meager or unlikely," that supports the defense. As a matter of *law*, all that is required is that the instruction properly articulates the

---

[8] Convictions based on guilty pleas may not be directly appealed and hence, Ronk agrees *per arguendo,* are generally regarded as final upon their entry and challengeable only by collateral attack. Miss. Code Ann. § 99-35-101; *Burrough v. State*, 9 So. 3d 368, 374 (Miss. 2009) (citing *Bennett v. State,* 865 So. 2d 1158, 1159 (Miss. 2004) and holding that "the proper procedure is for these persons to file a petition for post-conviction collateral relief in the circuit court. *See* Miss.Code Ann. §§ 99-39-1 to 99-39-29 (Rev. 2007).")

law of that defense. *Manuel v. State,* 667 So. 2d 590, 593 (Miss. 1995). *See also Brown*, 39 So. 3d at 899; *Banyard v. State,* 47 So. 3d 676, 682-83 (Miss. 2010), *Williams v. State,* 797 So. 2d 372, 378 (Miss. Ct. App. 2001). Where there are facts to support a particular defense, the jury cannot be deemed properly instructed unless it has received instruction on that defense. *Id.* Once instructed, the jury decides if the evidence it believes and any reasonable inferences from it establishes the elements of the crime or defense instructed upon and enters its verdict accordingly.

If the jury has been properly instructed on the law, the jury's fact findings that support its verdict are given great deference. That is so even if those findings might be inconsistent with other or more credible evidence. *See Groseclose v. State*, 440 So. 2d 297, 300 (Miss. 1983) (holding jurors are the sole arbiters of witness credibility); *Williams v. State*, 512 So. 2d 666, 670 (Miss. 1987) (holding contradictory testimony does not invalidate a verdict); *Spiers v. State*, 231 Miss. 307, 313, 94 So. 2d 803, 806 (1957) (holding that strength of testimony is not the result of a calculus of witnesses). If the jury has not been properly instructed on a defense, however, its findings of guilt on the crime charged are not sufficient to support its verdict, and reversal is required. *See Banyard,* 47 So. 3d at 683-85, *Giles v. State*, 650 So. 2d 846, 849 (Miss. 1995).

There is no question but that this Court's jurisprudence clearly establishes the legal standards defining the legal and factual differences between "subjectively reasonable" but not "objectively reasonable" use of force that constitutes imperfect

self-defense manslaughter. It has also offered significant guidance in assessing what kinds of evidence do, or do not, meet those standards.

This Court's legal definition of the crime of imperfect self-defense manslaughter has been long and clearly defined:

> The imperfect self-defense theory is: "that [the defendant] killed the deceased without malice, under the bona fide belief, but without reasonable cause therefor, that it was necessary for him so to do in order to prevent the appellant from inflicting death or great bodily harm upon him . . . ." *Cook v. State*, 467 So. 2d 203, 207 (Miss. 1985) (quoting *Williams v. State*, 127 Miss. 851, 854, 90 So. 705, 706 (1921))

Lanier v. State, 684 So. 2d 93, 97 (Miss. 1996) (explicitly ordering that an instruction to this effect be given on remand). *See also Wade v. State*, 748 So. 2d 771, 775 (Miss. 1999) (citing *Lanier,* but slightly rephrasing the test as "the use of force by someone operating under a *bona fide* (but unfounded) belief that it was necessary to prevent death or great bodily harm."). The *Lanier* language was used in the manslaughter instruction proffered in this case. [9]

The legal standard set forth in *Lanier* and *Wade* also clearly distinguishes the state of mind underlying the crime of manslaughter from that underlying a justifiable homicide, which is not a crime at all. *Ferrell v. State*, 733 So. 2d 788, 791 (Miss. 1999). To escape all criminal liability, the actor must not only subjectively believe himself to be in danger, but that belief must also be *objectively* reasonable:

---

[9] The imperfect self-defense instruction offered by Ronk tracks the *Lanier* language:

> That the Defendant, Timothy Robert Ronk, did wilfully kill Michelle Lynn Craite, without malice, under the bona fide belief, but without reasonable cause therefore, that it was necessary for him so to do in order to prevent Michelle Lynne Craite from inflicting death or great bodily harm upon him.

Instruction D-18, C.P. 256-57, Tr. 623.

"the actor's apprehension of danger must appear objectively real to a reasonable person of average prudence." *Page v. State*, 64 So. 3d 482, 488 (Miss. 2011). To be *subjectively* reasonable, by contrast, the apprehension of danger need only be actually apparent to the actor, even if it would not necessarily be so to a reasonable person of average prudence. Under those circumstances, the actor is not exonerated from all criminal responsibility. He is, however, guilty only of manslaughter, a lesser crime than murder or capital murder. *Lanier,* 684 So. 2d at 97; *Wade*, 748 So. 2d at 775.

This Court has also given considerable jurisprudential guidance on the kinds of factual circumstances that can give rise to an actor's subjectively reasonable but objectively unreasonable use of force. In some cases, the inherent characteristics of the actor relative to the circumstances alone can furnish that basis. *See, e.g., Evans v. State*, 109 So. 3d 1044, 1049 (Miss. 2013) (holding that beliefs of child actor suffering from PTSD may not be those of a reasonable person of average prudence, unable to fully justify killing his abusive father, but may be subjectively reasonable, and thus warrant conviction of imperfect self-defense manslaughter rather than murder or capital murder).

Usually, however, the events themselves, and their effect on the actor's perceptions, are what give rise to subjectively reasonable but objectively unreasonable actions. Where, as in this case, the killing occurs during a dispute between people who have a history with each other, the subjectively reasonable but objectively unreasonable fear is the product of the actor's heightened arousal from

the aggression of the other person. This in turn gives him reduced capacity for detached and accurate perception of impending danger. "Neither we, nor the jury, should test a defendant's reaction by the same calm, cool, judgment that we can, in complete detachment therefrom." *Johnson v. State*, 52 So. 3d 384, 395-96 (Miss. Ct. App. 2009) (reversing murder conviction and directly remanding for sentencing on imperfect self-defense manslaughter) (quoting *Bell v. State*, 207 Miss. 518, 528, 42 So. 2d 728, 731 (1949)). While this state of mind is insufficient to justify his use of force altogether, it is also insufficient to make his doing so murderous. [10]

Of course, no two cases can ever be identical. But some or all of these characteristics appear in the cases in which this Court has found that the criteria for imperfect self-defense manslaughter were met. *See, e.g., Wade*, 748 So. 2d at 773 (Objectively unreasonable, but subjectively reasonable for a person in a historically violent domestic relationship to arm herself and kill the partner, even though he was unarmed and merely turning or walking towards her at the time she did so, where decedent had early displayed a gun, and inflicted a beating on defendant.);[11] *Lanier* v. *State*, 684 So. 2d 93, 94, 97(Miss. 1996) (approving imperfect self-defense manslaughter instruction in capital murder case where "[A] jury might

[10] Though it is a separate theory of manslaughter from pure heat of passion manslaughter, imperfect self-defense manslaughter is created by the same statute, and almost always is found to have occurred under circumstances of heightened emotions and dispute between the decedent and the defendant or a third party associated with the defendant.

[11] "We hold the evidence was insufficient to convict Wade of murder. To do so would be 'contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice.' *Gossett*, 660 So. 2d at 1294. The facts of the case are better suited for imperfect self-defense or 'heat of passion manslaughter.'" *Wade,* 748 So. 2d at 777.

properly find that the threat of death or serious bodily injury was not imminently pending and thereby reject the theory of self-defense and the acquittal of a defendant [but also find that] the fatal shot was in response to a shot first fired by an officer in a tense, sudden confrontation arising without design of either party, thereby reducing the offense to manslaughter with a corresponding reduction in sentence."); *Cook v. State,* 467 So. 2d 203, 207-08 (Miss. 1985) (Objectively unreasonable but subjectively reasonable for defendant to use lethal force where decedent was wielding the lower half of a broken down pool cue to run decedent's friend out of a bar when defendant and the friend had returned to the bar after an earlier weaponless dispute over a pool game).[12]

Following this Court's guidance, the Court of Appeals has likewise found a variety of fact situations similar to those in the instant case that could or did meet the subjectively reasonable but objectively unreasonable standard. *See, e.g., Branch v. State,* 118 So. 3d 646, 647-48, 651-52 (Miss. Ct. App. 2013) *cert. denied,* 117 So. 3d 330 (Miss. 2013) (Decedent and defendant involved in ongoing dispute during the evening; insinuated threats of bodily harm being made by decedent against defendant during those disputes. At time of shooting, defendant already had gun

[12] "Cook's testimony, somewhat corroborated by the other witnesses, suggests that he acted under a bona fide subjective belief that it was necessary for him to kill Chandler to prevent infliction by Chandler of death or great bodily harm upon himself. By the same token, there is substantial evidence in the record from which the jury could have concluded that any such subjective belief on Cook's part was "without reasonable cause therefor." The evidence suggests that Chandler's principal animus was directed toward Hudson, not Cook. Under the facts and circumstances of this case, the jury could reasonably have concluded that a swaggering drunk such as Chandler wielding the pool cue simply did not present Cook with a life threatening situation. In short, the facts fit well within [imperfect self-defense manslaughter]." *Cook,* 467 So. 2d at 207-08.

pointed at decedent, and fired when he saw decedent reach for decedent's pocket that did not actually contain a weapon); *Bolton v. State,* 87 So. 3d 1129, 1130-31 (Miss. Ct. App. 2012) (prior dispute between decedent and defendant, earlier aggression by decedent deflected by other means, defendant asserted his own bona fide but mistaken belief that decedent was armed at the time defendant shot him, though there was also evidence that refuted that assertion.); *Johnson v. State,* 52 So. 3d 384, 395-96 (Miss. Ct. App. 2009) (decedent was defendant's daughter's boyfriend; history of violent exchanges between decedent and defendant in past; at time of killing, defendant incorrectly believed that he was under attack by decedent because decedent was leaning on his vehicle window as defendant tried to drive away).

In light of the foregoing, this Court's existing jurisprudence provides an ample basis to allay any concerns raised in its fourth and final supplemental briefing question. This Court has created clear legal standards that distinguish the use of force that is "objectively reasonable," from a use of force that is only "subjectively reasonable" *Compare Page,* 64 So. 3d at 488 (defining the "objectively reasonable" use of force that exonerates an individual from criminal liability altogether) *with Wade,* 748 So. 2d at 775, *Lanier,* 684 So. 2d at 97 *(*defining the "subjectively reasonable" and "objectively unreasonable" use of force that makes him guilty of a lesser homicide than murder). Trial courts have thus long had the tools to properly instruct juries on justifiable homicide and/or manslaughter and to distinguish between the two.

This Court's decisional law also fully addresses the kinds of fact situations that do or do not meet those legal standards. *See Evans,* 109 So. 3d at 1049, *Wade*, 748 So. 2d at 773, *Lanier*, 684 So. 2d at 94, *Cook,* 467 So. 2d at 207-08 (all finding the standards met). *See also Batiste v. State*, 121 So. 3d 808 (Miss. 2013) cert. denied, 134 S. Ct. 2287 (2014) (concluding that they were not). Ronk's principal briefing thoroughly discusses how the evidence in this case is sufficient to meet both the legal and factual standards established by this Court. He relies on that discussion here. *See* Tr. 499-500, 515, Ex. S-51, App. 1-22, App. Reply 1-8.

For the foregoing reasons, the trial court erred in denying Ronk's requested imperfect self-defense manslaughter instruction so that, if it rejected Ronk's self-defense theory, it could still convict him of something other than murder or capital murder. Because the lack of that instruction prevented the jury from considering one of Ronk's central theories of defense, it cannot be deemed constitutionally harmless. *Williams v. State,* 797 So. 2d 372, 378 (Miss. Ct. App. 2001). *See also Boyde v. California*, 494 U.S. 370, 379 (1990) (citing *Mills v. Maryland*, 486 U.S. 367 (1988); *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); *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973) (all recognizing the right to present a defense as "fundamental."). Reversal is therefore required. *See Banyard,* 47 So. 3d at 683-85, *Giles v. State*, 650 So. 2d 846, 849 (Miss. 1995).

CONCLUSION

Imperfect self-defense manslaughter has long had a place in this State. Defendants have offered it as a means of lessening culpability. The State has offered and/or charged it as a means of properly charging defendants for their actions. Imperfect self-defense's roots lie firmly in our Code – there is little to no published opinion to the contrary. Ronk respectfully contends that he was denied his fundamental right to have the jury properly instructed on his theory of defense. This error requires reversal and a new trial. Should it aid the court, Ronk respectfully accedes to suspension of the Rules of Appellate Procedure pursuant to Mississippi Rule of Appellate Procedure 2(c), and oral argument in the above styled case in order to aid this Court in coming to a timely final decision.

Respectfully submitted,

Timothy Ronk, Appellant

By: /s/ Justin T. Cook

Alison Steiner, Miss. Bar #7832
OFFICE OF STATE PUBLIC DEFENDER
CAPITAL DEFENSE COUNSEL DIVISION
239 N. Lamar St. Suite 604
Jackson, MS 39201

Justin T. Cook, Miss. Bar #102622
OFFICE OF STATE PUBLIC DEFENDER
INDIGENT APPEALS DIVISION
Post Office Box 3510
Jackson, MS 39207

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:

John Henry, Esq.
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 13th day of August, 2014

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