IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

DANTE O. TAYLOR **APPELLANT**

VS. **NO. 2017-CT-01596-SCT**

STATE OF MISSISSIPPI **APPELLEE**

APPELLEE'S M.R.A.P. 17(h) SUPPLEMENTAL BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

APPELLEE'S M.R.A.P. 17(h) SUPPLEMENTAL BRIEF

On July 18, 2019, this Court filed an Order granting Dante O. Taylor's Petition for Writ of Certiorari. Pursuant to Rule 17(h) of the Mississippi Rules of Appellate Procedure, the State files this Supplemental Brief in opposition of Dante's contention that the result reached by the Court of Appeals in this case was incorrect and that Dante is entitled to a new trial.

STATEMENT OF THE CASE AND FACTS

Dante was indicted for and convicted of First Degree Murder in violation of Mississippi Code Annotated Section 97-3-19(1)(a). (CP 10) He was sentenced as a habitual offender to life in prison without the possibility of parole. (CP 185-86) The importance of the facts in this case make a brief rehashing of them necessary.

Willie Taylor hid his nephew's bicycle after the boy continued to ride it in the road. (TR 113) This angered the boy's mother, Willie's niece Tiffany, and she and Willie fought. (TR 114) When Willie left, Tiffany called her brother Dante and told him that "Uncle Willie had jumped on her." (TR 115) She called the police and when they arrived, Tiffany had no visible injuries. (TR 152-53)

Later that night, Dante went to see Tiffany and console her. (TR 113) He also called his mother, Madeline Adams, to talk about Willie who was her brother. (TR 128-29) Dante told her "that Willie put his hands on a female in the family *for the last time*." (TR 128-29) He also called Willie a "weak ass bitch" and told his mother that he was going to "do" him and punish him. (TR 129) Dante's mother assumed that this was nothing more than "trash talking." (TR 129) She did admit that Willie was supposedly looking for Dante that night and wanted to hurt him. (TR 133-34)

Michelle Evans, Dante's aunt, witnessed the shooting as it took place in front of her house as she and others were sitting in her yard. (TR 136) She saw Dante driving around before the shooting, "riding up and down the road." (TR 137) "He left and went gone for a little bit, and then

he came right back." (TR 137) When he came back to her house, he parked in her driveway, and sat on his car without speaking to anyone. (TR 137) Then Willie "came from around the house" and walked towards Dante. (TR 137-38) When Dante saw Willie, he jumped off the car and walked towards him. (TR 138) Michelle testified that it was not unusual for Willie to come to her house because he lived around the corner and came over "all the time." (TR 137-38) She thought the two men were going to fist fight, but "[n]ext thing you know, a gun went off, and my brother was down on the ground." (TR 138) She asked Dante why he shot Willie and "[h]e got in the car and took off." (TR 138-39) She did not hear either man say anything before the shooting and she said it all happened very fast. (TR 139) Willie was not armed.

Maya Taylor, Dante's cousin and Willie's niece, told the jury that prior to the shooting she was sitting with her mom, her mom's husband, and their neighbor. (TR 109) Dante was sitting on his car not talking to anyone. (TR 109) She saw Willie walk up quickly from behind her house. (TR 111) He lived behind her and came over everyday. (TR 110) Dante walked towards Willie and Willie raised his fists. (TR 111) When they got "very close together" Dante shot him. (TR 111-12) Maya did not see Willie with any weapons and everyone was "really shocked he shot him." (TR 112)

Dante was the only defense witness. He told the jury that the night before the shooting his sister called him crying because Willie had choked her. (TR 193) Dante told her to call the police because he could not come to her since he was without a car. (TR 193) Dante claimed that his mother then called him and said that Willie had threatened to kill him and that he better watch his back. (TR 193) Dante "went and got a pistol" to protect himself from Willie. (TR 194) He said the next day he got a call from his sister saying that Willie was threatening her because she had called the police. (TR 195)

So Dante went to his aunt Michelle's house where Tiffany was staying. (TR 195) He said that

when he pulled up some of his family members were sitting under a tree playing dominos. He said he spoke to "everybody" and tried to get his sister to leave with him. She refused because she did not want to leave her car there because Willie had apparently threatened to damage it or have it towed. Dante told the jury that he left to go get cigarettes. When he returned, he said that he sat in his car for a while and tried again, over the phone, to get his sister to leave. (TR 196)

Dante testified that he got out of the car smoking a cigarette and walked to the side of the house to use the bathroom. (TR 196) He turned around "because he just had a feeling" and he saw Willie "coming outside the house charging" him. (TR 196) Willie allegedly yelled, "I got your A-S-S now." (TR 196, 209) "And that's when I just pulled out my gun and I shot him." (TR 197) He told the jury that he was "just trying to stop [Willie]." (TR 198) Dante claimed that the witnesses to the shooting didn't hear Willie say anything because they were too far away. (TR 209-10)

Dante admitted that he told Willie that Willie wasn't "going to F with [him]" the night before the shooting. (TR 198, 206) But he claimed that his mother's testimony was all wrong– she didn't plead with him to leave Willie alone, he didn't call his uncle a "weak ass bitch" and he didn't tell his mom he was going to "do" Willie. (TR 199) Dante also admitted to going over to his aunt's house the day of the shooting knowing that Willie went there every day. (TR 203-04) But he claimed that he didn't think Willie would be there at that time because he "was told [Willie] was coming to my house at that very moment." (TR 204) But this conflicts with other testimony Dante gave, specifically that Willie gave Tiffany one hour to get her belongings and car or he'd "come back and beat the 'F' out of her." (TR 195) So if that was true, then Dante knew that Willie would be coming back to Michelle's house to see if Tiffany had left.

Dante fled after the shooting and wrapped the gun in a shirt before throwing it out the window. (TR 201, 203) He also removed the SIM card from his cell phone because he and Willie

had exchanged text messages the night before. (TR 208)

ARGUMENT

I. The trial court did not err in granting jury instruction S-13.

The trial court granted a pre-arming instruction, which read:

> The Court instructs the Jury that it is for the Jury to decide and if you believe from the evidence in this case beyond a reasonable doubt that the Defendant, Dante O'Bryan Taylor, armed himself with a deadly weapon and sought Willie Lee Taylor, with the formed felonious intention of invoking a difficulty with Willie Lee Taylor, or brought on, or voluntarily entered into any difficulty with Willie Lee Taylor, then the Defendant, Dante O'Bryan Taylor, cannot invoke the law of self-defense.

(CP 151) This instruction has been approved in nearly identical form in cases before this Court and the Court of Appeals, all of which are outlined in the State's Appellee Brief. But Dante claims that the Court of Appeals decision is incorrect because it conflicts with the prior decisions of this Court in ***Boston v. State***, 234 So. 3d 1231 (Miss. 2017), ***Dew v. State***, 748 So. 2d 751 (Miss. 1999), ***Johnson v. State***, 908 So. 2d 758 (Miss. 2005), and ***Keys v. State***, 635 So. 2d 845 (Miss. 1984). Respectfully, this is incorrect.

In ***Boston***, Boston fatally stabbed Dean with a pocket knife after an argument. ***Boston***, 234 So. 3d at 1233. Boston had purchased the pocket knife a month before for reasons completely unrelated to Dean. As the ***Boston*** Court pointed out, there was "no evidence" that "Boston placed the knife in his pocket with the intent to provoke an altercation with Dean." ***Id***. at 1235. There was no evidence that Boston even knew he would see Dean at the school. This is a critical difference from Dante's case, where Dante testified that he "went and got a pistol, you know, because, you know, my uncle is looking for me to kill me." (TR 194) Dante admitted that he got the pistol solely because of the conflict between he and his uncle. The very next day, Dante went to his aunt's house, which was next door to Willie's house, where Willie was known to be everyday, and sat on the hood

of his car with the gun in his pocket. When Willie approached, Dante shot him.

This Court has held that "[i]f a person provokes a difficulty, arming himself in advance, and intending, if necessary, to use his weapon and overcome his adversary, he becomes the aggressor, and deprives himself of the right to self-defense." ***Chandler v. State***, 946 So. 2d 355, 363 (Miss. 2006) (quoting ***Parker v. State***, 401 So. 2d 1282, 1286 (Miss. 1981)). This is exactly what Dante did. Dante testified that his sister Tiffany, who he was supposedly there to protect, did not want to leave with him. So at that point, a reasonable person would have left. Instead, Dante stayed right where he knew Willie would be coming and shot him when he arrived.

The facts in ***Dew v. State*** are in stark contrast to the facts in Dante's case. Dew stabbed Tisdale who had actually stabbed him a few months earlier. Tisdale was known to carry a knife and there was testimony that Tisdale displayed a knife and swung a shovel at Dew before he was stabbed. ***Dew***, 748 So. 2d at 753. In Dante's case, Willie was unarmed when he was shot. There was no evidence that Willie had ever fought with Dante in the past. Although there was evidence that Willie had threatened Dante the day before the shooting, the two men were not together when the threats were made. Dante told his mother that he was going to "do" Willie and punish him and "that Willie put his hands on a female in the family *for the last time*." Dante held true to his word by getting a gun, going to where he knew Willie would be and shooting him.

The ***Dew*** Court held: "No evidence was proffered suggesting that Dew armed himself with the intent of luring the victim, Henry Tisdale, into a confrontation then using a deadly weapon to overcome him. When there is a total lack of evidence, it is not proper for a court to give a pre-arming instruction." ***Dew***, 748 So. 2d at 754. Ignoring this, Dante instead focuses on what the ***Dew*** Court said regarding ambiguity as to who was the first aggressor: "[T]here is conflicting testimony here as to who was the first aggressor. When this ambiguity is present, a pre-arming instruction is not

appropriate." ***Id***. The ***Dew*** Court cited ***Barnes v. State***, 457 So. 2d 1347, 1349-50 (Miss. 1984), for authority. But if one reads the ***Barnes*** decision, it becomes clear that ambiguity was not the Court's concern. Rather, the ***Barnes*** Court held that the pre-arming instruction was inappropriate because there was no evidence presented at trial to support the instruction:

> Theory without proof simply cannot support the granting of an instruction. Our review of the record leads us to the conclusion that the state failed to support its theory with evidence. The state never established at what point Barnes armed herself, indeed the only testimony in that regard is that of Barnes herself. She stated that she took her gun with her when she left her house early in the morning the day of the shooting. She testified she did so because she would be out late and that she had been robbed on several prior occasions. There is simply no evidence to suggest that she armed herself after receiving a call reporting her boyfriend's and Stevens' activities.

Barnes, 457 So. 2d at 1349-1350. ***Barnes*** did not hold that the instruction was erroneous simply because the trial testimony was ambiguous. The State respectfully submits that ***Dew*** was incorrect in holding that "ambiguity" precludes the giving of a pre-arming instruction.

The facts of ***Johnson v. State*** are also markedly different than those in Dante's case. Johnson stabbed Davis after watching Davis hit his female friend Landrum in the face and chest. Davis had been harassing Johnson and Landrum earlier in the day, so much so that Johnson had called the police. Johnson and Landrum testified that Davis had a "black object in his hand" when Johnson stabbed him. ***Johnson***, 908 So. 2d at 760. Willie hit no one before he was shot and was unarmed.

Keys v. State also presents an entirely different scenario. Keys' victim, Cunningham, had slapped Keys earlier in the day after a game of basketball. ***Keys***, 635 So. 2d at 846-47. Cunningham went to Keys' grandmother's house, where Keys was hiding, with a gun in his pants and called him "foul names and invit[ed] him to come outside." ***Id***. Later that night, Keys went to the store for a family member, armed with a pistol, and saw Cunningham on the street corner. "It is uncontradicted that Cunningham 'mouthed off' at Keys and that Cunningham's hands were in motion even if, in

truth, he was only counting money." ***Id***. at 848. Keys shot and killed Cunningham. The ***Keys*** Court found that this was a "classic case of self-defense" and that a pre-arming instruction was inappropriate. ***Id***. Dante's case was not a classic case of self-defense, nor was the pre-arming instruction potentially confusing to the jury as it was in ***Keys***.

Dante argues that the pre-arming instruction barred him from claiming self-defense. Dante claimed self-defense throughout his testimony and the jury received instructions on self-defense and imperfect self-defense manslaughter. Notably, the jury was also given Instruction No. 14, which was submitted as D-18. It read:

> The Court instructs the jury that while the danger that justifies one person taking another person's life must be immediate, pending, and present, such danger does not need to be unavoidable except by killing in self-defense. The Defendant DANTE O'BRYAN TAYLOR is not required to flee from the danger of his body or life.
>
> If you the jury find that the Defendant DANTE O'BRYAN TAYLOR was in a place where he had a right to be and the Defendant was not the initial aggressor or provoker, then the Defendant has no duty to flee or retreat and does not lose his right to self-defense.

(CP 161)

During the jury instruction conference, the trial judge stated: "I'm going to give D-18 out of an abundance of caution, but also will be granting the pre-arming instruction." (TR 233) This instruction, along with the pre-arming instruction, allowed the jury to determine whether or not Taylor acted in self-defense. As this Court has found many times:

> Jury instructions are generally within the discretion of the trial court and the settled standard of review is abuse of discretion. This Court reviews jury instructions as a whole. When those instructions, taken as a whole fairly–although not perfectly–announce the applicable primary rules of law ... no reversible error will be found.

Moody v. State, 202 So. 3d 1235, 1236-37 (Miss. 2016) (internal quotations and citations omitted). The instructions as a whole show that Dante was not prevented from asserting self-defense. Because

of this, as well as the stark factual differences in the cases that Dante points to in his Petition for Certiorari, there is no conflict that would justify reversing the opinion of the Court of Appeals.

II. The trial court did not err in denying jury instructions D-19 and D-20.

Dante argues that the Court of Appeals erred in upholding the trial court's decision to deny his proposed jury instructions D-19 and D-20. D-19 read:

> The Court instructs the jury that if you believe from the evidence that the deceased Willie Lee Taylor was a larger man than the defendant DANTE O'BRYAN TAYLOR and was capable of inflicting great and serious bodily harm upon DANTE O'BRYAN TAYLOR with his hands or fists, and the Defendant had a reason to believe as a man of ordinary reason that he was then and there in danger of such serious bodily harm at the hands of the deceased Willie Lee Taylor and the Defendant used a handgun, with which he fatally shot Willie Lee Taylor, to protect himself from such harm, then the Defendant was justified even though the deceased was not armed.

(CP 170) D-20 read:

> The Court instructs the jury that if you believe from the evidence that the deceased Willie Lee Taylor was capable of inflicting great and serious bodily harm upon DANTE O'BRYAN TAYLOR with his hands or fists, and the Defendant had reason to believe as a man of ordinary reason that he was then and there in danger of such serious bodily harm at the hands of the deceased Willie Lee Taylor and the Defendant used a handgun, with which he fatally shot Willie Lee Taylor, to protect himself from such harm, then the Defendant was justified even though the deceased was not armed.

(CP 171)

Dante's proposed instructions have only been approved in other cases when they were supported by the evidence. In ***Marshall v. State***, 72 So. 2d 169 (Miss. 1954), Marshall stabbed his victim after a morning of drinking and fighting between the two. ***Id***. at 851. On appeal, Marshall offered an essentially identical instruction to Dante's D-19 and 20. ***Id***. at 855. This Court, in affirming Marshall's conviction, found:

> There is no proof in the record to show that the deceased at the time of the fatal encounter was attempting to inflict 'great and serious bodily harm upon the defendant

> with his hands and feet.' The defendant testified that at the time he stabbed the deceased the deceased was advancing on him with a shovel. The defendant testified more than once that he was afraid of the deceased. But the mere fact that the deceased may have been 'physically capable of inflicting great and serious bodily harm upon the defendant with his feet and hands,' and that the defendant was afraid of the deceased, was not sufficient in itself to justify the stabbing.

Id. The same conclusion should be found here.

While Dante did testify that he was afraid of Willie and Willie did weigh more than Dante, that was not enough to justify the killing. There was no evidence that Willie was actually trying to inflict serious bodily harm upon Dante when Dante shot him. Dante's own testimony revealed that he was leaning on the trunk of his car when he saw Willie coming towards him. Michelle's testimony was that as soon as Dante saw Willie, Dante "jumped off the car and *walked toward him*." This completely negates Dante's story that he was so threatened by Willie's size that he had no other choice but to shoot him. Instructions D-19 and D-20 say that Dante must have been "*then and there* in danger of such serious bodily harm at the hands of the deceased" when he shot him. Given that Dante shot Willie when they were at least two to three feet away from each other, it is unreasonable to believe that Dante felt he was in such serious danger that he had no other choice but to shoot Willie.

The trial court found: "The self-defense theories of the case are properly or adequately covered elsewhere, and given the instruction as a whole, your theory of the defense is covered." (TR 233) This was not an abuse of discretion and Dante's jury was properly instructed.

CONCLUSION

The State of Mississippi respectfully requests that this Honorable Court find that there was no error and affirm the Court of Appeals' decision upholding Dante's conviction and sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, ABBIE EASON KOONCE, hereby certify that on this day I electronically filed the foregoing pleading or other paper with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

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Further, I hereby certify that I have mailed by United States Postal Service the document to the following non-MEC participants:

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This, the 29th day of July, 2019.

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