IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

DANTE O. TAYLOR — APPELLANT

V. — NO. 2017-KA-01596-COA

STATE OF MISSISSIPPI — APPELLEE

PETITION FOR WRIT OF CERTIORARI

OFFICE OF STATE PUBLIC DEFENDER
INDIGENT APPEALS DIVISION
Hunter N. Aikens, Miss. Bar No. 102195
P.O. Box 3510
Jackson, Mississippi 39207-3510
Phone: 601-576-4200
Fax: 601-576-4205
email: haike@ospd.ms.gov

Counsel for Dante O. Taylor

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

DANTE O. TAYLOR **APPELLANT**

V. **NO. 2017-KA-01596-COA**

STATE OF MISSISSIPPI **APPELLEE**

PETITION FOR WRIT OF CERTIORARI

COMES NOW the Appellant, Dante O. Taylor, through counsel, and petitions this Honorable Court, pursuant to Rule 17(a)(1) of the Mississippi Rules of Appellate Procedure, to grant certiorari review of the Mississippi Court of Appeals' decision handed down in this matter on December 4, 2018, and in support thereof would show the following:

Dante Taylor was convicted of first-degree murder and sentenced to life imprisonment without parole. The Mississippi Court of Appeals affirmed Taylor's conviction and sentence; the Court of Appeals' opinion and judgment are attached to this petition as Appendix A. Taylor filed a motion for rehearing, and the Court of Appeals denied it; the motion for rehearing and the notice denying the same are attached as Appendix B and Appendix C. Taylor submits that certiorari review of this case is warranted under Rule 17(a)(1), as the Court of Appeals' decision conflicts with prior decisions of this Court.

I. The trial court erred in granting a "pre-arming" instruction, which precluded or impaired Dante's theory of self defense.

The trial court committed prejudicial reversible error in granting the State a "pre-arming" instruction. The instruction (offered as instruction S-13 and granted as instruction #12) read as follows:

> The Court instructs the Jury that it 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 with the design and felonious intent to cause serious bodily harm to Willie Lee Taylor, then the Defendant, Dante O'Bryan Taylor, cannot invoke the law of self-defense.

(C.P. 151; R.E. 11). The trial court granted the instruction, reasoning that there was conflicting evidence, a portion of which the jury could use to infer that Dante got the gun with the intent to shoot Willie. (Tr. 237). Specifically, the trial court reasoned:

> Well, I think there's conflicting testimony or it can be inferentially argued based upon the mother's testimony about what the defendant told her about his, being the defendant, intent or plans to go punish him or set it right, whatever the testimony was, which my appreciation was that there was some malice aforethought going on, perhaps. Which a jury could make a legal inference that that's why he had that weapon.

(Tr. 237).

The Court of Appeals' majority opinion concluded that the trial court properly granted the pre-arming instruction, the majority opinion reasoned as follows:

> Here, the testimony from the witnesses showed that Dante armed himself when he was not in any physical danger, went to a house that Willie visited every day (which was also right next to Willie's house), sat in front of that house with a gun in his back pocket, and then shot Willie from at least two feet away. Dante's mother testified that, the night before the shooting, Dante had threatened to "punish" or "do" Willie. And Dante testified that he got a pistol that same night after talking to his mother. Based on Mississippi precedent, we find the evidence here supported the court's decision to give a pre-arming instruction.

Opinion at (¶26).

As Judge Cartlon's dissent notes, this Court has "[e]xplained that a pre-arming instruction is appropriate only where '[t]he record [is] uncontradicted that the defendants armed themselves with the intent to initiate a confrontation.'" Opinion at (¶35) (Carlton, J., Dissenting) (quoting *Boston v. State*, 234 So. 3d 1231, 1235 (¶12) (Miss. 2017)). Also, "[w]hen there is ambiguity regarding who

is the first aggressor, a pre-arming instruction is not appropriate." *Johnson v. State*, 908 So. 2d 758, 762 (¶15) (Miss. 2005) (citing *Dew v. State*, 748 So. 2d 751, 754 (Miss. 1999)). Judge Carlton's dissent accurately observes that "the record reflects that the evidence presented at trial created a conflict as to whether Dante armed himself with the intention of initiating a confrontation with Willie and as to whether Dante was the initial aggressor." Opinion at (¶35) (Carlton, J., Dissenting).

The majority opinion overlooks that there was evidence that Dante armed himself only to protect himself and that Dante went to Evan's house to help his sister and to actually avoid Willie–not encounter or initiate a confrontation with Willie. Dante testified that his mother called him the night before the shooting and told him that Willie had "just left [her] house, threatened to kill me, and [said] when he catch me he was going to kill me." (Tr. 193). Dante testified that he took Willie's threat seriously and that he got the gun to protect himself in case Willie was able to find him to follow through on the threat. (Tr. 193-94, 206, 210). Dante's testimony was also supported by the testimony of his mother, who acknowledged that she knew that Willie was looking for Dante and wanted to hurt him. (Tr. 133-34). Dante also specifically testified that he went to Evans' house with the intent to help his sister[1] and to actually avoid Willie, as Dante was told that Willie was currently headed to Dante's mother's house looking for him. (Tr. 204-05, 208).

Contrary to the Court of Appeals' majority opinion's conclusion, the evidence in this case was not uncontradicted that Dante armed himself with the intent to provoke a confrontation when he was in no danger. The trial court itself deemed the evidence conflicting. (Tr. 237). The trial court, therefore, applied an incorrect standard in deciding to grant the instruction: "'[E]ven if the

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[1] Dante testified that, on the morning of the shooting, his sister called and said Willie had threatened to come and "beat the F out of her" because she called police on him the night before. (Tr. 194-95). Dante testified that he went to Evans' house to try to get his sister to leave with him while Willie was headed to Dante's mother's house looking for Dante. (Tr. 196, 208).

great weight of evidence against [the defendant] supports a contrary view, [the defendant] is still entitled to present his defense to the jury unimpaired by instructions ... [that] preclude his right to self-defense.'" *Boston*, 234 So. 3d at 1234-35 (quoting *Dew*, 748 So. 2d at 754). In sum, "[t]his is a case containing disputed facts regarding [Dante's] self-defense, and this issue [] should be presented to the jury by conventional self-defense instructions." *Johnson*, 908 So. 2d at 763 (citing *Keys*, 635 So. 2d at 849). It is not important whether the trial judge thinks appellant's story is plausible. This is the jury's job." *Lenard v. State*, 552 So. 2d 93, 97–98 (Miss. 1989).

The evidence also did not establish that Dante was the initial aggressor. Instead, the evidence showed that Willie was the initial aggressor. At worst, the evidence was ambiguous as to who was the initial aggressor. "[W]hen there is ambiguity regarding who is the first aggressor, a pre-arming instruction is not appropriate." *Johnson*, 908 So. 2d at 762 (citing *Dew*, 748 So. 2d at 754). Dante, Maya, and Michelle all testified that Dante was sitting on his car, and Willie suddenly came from behind the house and charged at Dante with his fists. (Tr. 111, 121-22, 137-38, 197). Maya testified that Willie was "walking very fast" from behind the house, yelling and "charging at him [Dante] with his fists." (Tr. 110-11,121-22). Similarly, Dante testified that he turned around to find Willie charging at him and threatening "I got you're A-S-S now." (Tr. 197, 210). And Dante's mother testified that, after the shooting, Dante told her that Willie "patted his pocket" as he approached Dante. (Tr. 130). "[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." *Dew*, 748 So. 2d at 754 (quoting *Barnes v. State*, 457 So. 2d 1347, 1349–50 (Miss. 1984)).

The Court of Appeals' majority opinion also reasons that the pre-arming instruction "did not preempt Dante's self-defense claim but submitted the issue to the jury for its determination. *See Hall*, 420 So. 2d at 1385. Further, Dante also received an imperfect self-defense instruction."

Opinion at (¶27). The majority opinion's reasoning on this point misapprehends the law and conflicts with prior decisions of this Court explaining that "[t]he rationale for caution regarding a pre-arming instruction is that *in effect it is a peremptory instruction for the prosecution, impairing or precluding the defendant's right to self-defense*." *Dew*, 748 So. 2d at 754 (citing *Keys*, 635 So. 2d at 849) (emphasis added); *see also Boston*, 234 So. 3d at 1234 (¶9) (quoting *Dew*, at 754).

The trial court committed prejudicial reversible error in granting the State a pre-arming instruction. The Court of Appeals' majority opinion in this case conflicts with prior decisions of this Court in *Boston*, *Johnson*, *Dew* and *Keys*. Accordingly, this Court should grant certiorari review and hand down a new opinion reversing Taylor's conviction and sentence and remanding this case for a new trial.

II. The trial court erred in refusing instructions D-19 and D-20.

A critical aspect of Dante's theory of self-defense was that Willie was a much larger man capable of causing serious bodily injury with his hands and fists alone, and Dante reasonably feared an imminent and apparent danger of serious bodily harm when Willie emerged from behind the house and charged him wit his fists. Through instructions D-19 and D-20, Dante sought to have his jury informed that he was not deprived of the ability to claim self-defense because Willie was unarmed.

The Court of Appeals' opinion concluded that the trial court properly refused instructions D-19 and D-20, reasoning that, "[t]here was no physical struggle between Dante and Willie; the evidence showed that Dante shot Willie from at least two feet away. Further, Dante's theory of self-defense was properly presented in Instruction S-10 [a general instruction on the definition of self-defense.] " Opinion at (¶30).

The Court of Appeals' opinion overlooks that under Mississippi law, Dante was not required

to wait until Willie assaulted him to use defensive force; he had the right to anticipate an attack and to act upon reasonable appearances. *See, e.g.*, *Lee v. State*, 232 Miss. 717, 724, 100 So. 2d 358, 361 (1958) ("The appellant had the right to anticipate the acts of the intruder and to act upon what then reasonably appeared to be necessary for the protection of his life.") (citing *Lomax v. State*, 205 Miss. 635, 642, 39 So. 2d 267, 269 (1949); *Bell v. State*, 207 Miss. 518, 529, 42 So. 2d 728, 732 (Miss. 1949) ("'[T]he danger need not be actual, but only reasonably apparent and imminent. . . . The law authorizes action on reasonable appearances[.]'") (citing *Scott v. State*, 203 Miss. 349, 353-54, 34 So. 2d 718, 719 (1948)). In this case, there was evidence indicating that immediately before the shot, Willie emerged from behind a house and charged Dante with his fists while threatening "I got you're ASS now" and patting his pocket. (Tr. 110-11, 121-22, 130, 197, 210). Dante weighed 140-160 pounds. (Tr. 199-200). Willie weighed 290 pounds. (Tr. 180). In furtherance of his defense, Dante's testimony explained that Willie's size was a significant factor in his fear and decision to use the gun: "I was just trying to stop him. . . I didn't want him to do nothing to me because for one, you know, *he already twice my size at that time*. And he threatened to kill me, so I was just defending myself." (Tr. 198) (emphasis added). Dante also testified that "I didn't know if he had anything or not. It's just my life was threatened. *And as big as he is*, he could have did anything to me." (Tr. 205) (emphasis added). Under Mississippi law, Dante had the right to act on appearances and defend himself against Willie's apparent and imminent attack.

The Court of Appeals' opinion also overlooks that a general self-defense instruction does not obviate the error in refusing instructions such as D-19 and D-20 where, as here, the defendant claims (and presents evidence) that he was justified in using a deadly weapon against a larger unarmed person. *Robinson v. State*, 858 So. 2d 887, 898-99 (¶¶46-50) (Miss. Ct. App. 2003). Here, as in *Robinson*, "[t]he most important part of the defense was not explained, namely, that the defendant

was justified in using a deadly weapon against the larger and intimidating [Willie] if [Dante] reasonably perceived that he was in danger of death or serious bodily injury from [Willie's] fists." *Robinson*, at 899 (¶51).

The trial court erred by refusing instructions D-19 and D-20 and unfairly limiting Dante's right to have the jury fully instructed on his theory of defense. The Court of Appeals' opinion conflicts with prior decisions of this Court in *Robinson*, *Lee*, *Bell* and *Scott*. And Dante requests this Court to grant certiorari review and issue a new opinion reversing his conviction and sentence and remanding this case for a new trial.

CONCLUSION

Dante Taylor submits that certiorari review of the Court of Appeals decision in this case is warranted pursuant to Rule 17(a)(1) of the Mississippi Rules of Appellate Procedure. Taylor requests this Honorable Court to grant this Petition for Writ of Certiorari and issue a new opinion reversing his conviction and sentence and remanding this case for a new trial.

Respectfully submitted,

OFFICE OF STATE PUBLIC DEFENDER
INDIGENT APPEALS DIVISION
For Dante O. Taylor, Appellant

BY: /s/ Hunter N. Aikens
Hunter N. Aikens, Miss. Bar# 102195
COUNSEL FOR APPELLANT

OFFICE OF STATE PUBLIC DEFENDER
INDIGENT APPEALS DIVISION
P.O. Box 3510
Jackson MS 39207-3510
Phone: 601 576-4200
Fax: 601-576-4205
Email: haike@ospd.ms.gov

CERTIFICATE OF SERVICE

I, Hunter N. Aikens, Counsel for Dante O. Taylor, hereby certify that I have this day electronically filed the foregoing **PETITION FOR WRIT OF CERTIORARI** with the Clerk of Court using the MEC system which issued electronic notification of such filing to:

Honorable Jason L. Davis
Attorney General Office
Post Office Box 220
Jackson, MS 39205-0220

So certified, this the 15th day of April, 2019.

/s/ Hunter N. Aikens
Hunter N. Aikens; Miss. Bar # 102195
COUNSEL FOR APPELLANT

OFFICE OF STATE PUBLIC DEFENDER
INDIGENT APPEALS DIVISION
P.O. Box 3510
Jackson MS 39207-3510
Phone: 601 576-4200
Fax: 601-576-4205
Email: haike@ospd.ms.gov

APPENDIX A

Supreme Court of Mississippi
Court of Appeals of the State of Mississippi
Office of the Clerk

D. Jeremy Whitmire
Post Office Box 249
Jackson, Mississippi 39205-0249
Telephone: (601) 359-3694
Facsimile: (601) 359-2407

(Street Address)
450 High Street
Jackson, Mississippi 39201-1082

e-mail:sctclerk@courts.ms.gov

December 4, 2018

This is to advise you that the Mississippi Court of Appeals rendered the following decision on the 4th day of December, 2018.

Court of Appeals Case # 2017-KA-01596-COA
Trial Court Case # B2401-2016-102

Dante O. Taylor a/k/a Dante O'Bryan Taylor a/k/a Dante O'Brien Taylor a/k/a Dante Taylor v. State of Mississippi

Current Location:
WCCF #138016
2999 U.S. 61
Woodville, MS 39669

Affirmed. Harrison County taxed with costs of appeal.

* NOTICE TO CHANCERY/CIRCUIT/COUNTY COURT CLERKS *
If an original of any exhibit other than photos was sent to the Supreme Court Clerk and should now be returned to you, please advise this office in writing immediately.

Please note: Pursuant to MRAP 45(c), amended effective July, 1, 2010, copies of opinions will not be mailed. Any opinion rendered may be found at www.courts.ms.gov under the Quick Links/Supreme Court/Decision for the date of the decision or the Quick Links/Court of Appeals/Decision for the date of the decision.

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2017-KA-01596-COA

DANTE O. TAYLOR A/K/A DANTE O'BRYAN TAYLOR A/K/A DANTE O'BRIEN TAYLOR A/K/A DANTE TAYLOR — **APPELLANT**

v.

STATE OF MISSISSIPPI — **APPELLEE**

DATE OF JUDGMENT:	12/20/2016
TRIAL JUDGE:	HON. CHRISTOPHER LOUIS SCHMIDT
COURT FROM WHICH APPEALED:	HARRISON COUNTY CIRCUIT COURT, FIRST JUDICIAL DISTRICT
ATTORNEY FOR APPELLANT:	OFFICE OF STATE PUBLIC DEFENDER BY: HUNTER NOLAN AIKENS
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: ABBIE EASON KOONCE
DISTRICT ATTORNEY:	JOEL SMITH
NATURE OF THE CASE:	CRIMINAL - FELONY
DISPOSITION:	AFFIRMED: 12/04/2018
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

FAIR, J., FOR THE COURT:

¶1. Dante Taylor was convicted of murder and sentenced to life without parole as a habitual offender. He appeals his conviction asserting that the jury was improperly instructed, entitling him to a new trial. In the alternative, he argues that the jury's verdict was against the overwhelming weight of the evidence. Finding no error, we affirm.

FACTS

¶2. On September 23, 2014, Dante was at a friend's house when his sister, Tiffany Taylor,

called him crying. She said that their uncle, Willie Taylor, had jumped on her and choked her. At the time, Tiffany lived with their aunt, Michelle Evans, who is Willie's sister. Dante told Tiffany to call the police and press charges and to show police where Willie lived. Tiffany hung up the phone with Dante and then called the police.

¶3. Officer George Vitteck was dispatched to Evans's house in response to the domestic-disturbance call. He spoke with Tiffany, who informed him that she and Willie got into an argument over her child's bicycle. Tiffany told the officer that Willie hit her in the face and grabbed her around the neck. Officer Vitteck testified that Tiffany had no visible injuries.

¶4. Evans's daughter, Maya Taylor, witnessed the fight between Tiffany and Willie. Maya testified that Willie hid Tiffany's son's bicycle because he was riding the bike in the street, which Willie thought was unsafe. Willie and Tiffany started arguing, and Tiffany "[w]as all up on him, so he was pushing her up off of him. And once she start punching him he started hitting her back." Maya testified that the fight lasted "less than five minutes." When Tiffany called the police, Willie left. Maya also testified that Tiffany called Dante and told him that Willie had jumped on her, and Dante came to Evans's house later that night.

¶5. Madeline Adams, Dante's mother, testified that she called Dante that night and asked him to leave Willie alone. On direct examination, she testified that Dante said that "Willie put his hands on a female in the family for the last time" and that he was "going to do him" or "going to punish him." On cross-examination, Adams admitted that Willie was looking for Dante that night and wanted to hurt him.

¶6. Dante testified on his own behalf. He stated that he went to Evans's house that night to check on Tiffany and let her know that he loved her and was there for her. Before Dante left, he told Tiffany to lock the door to the house in case Willie tried to come back and hurt her. Dante also testified that, after Willie's fight with Tiffany, he "had words" with Willie. Dante said that Willie threatened him, and, in turn, Dante told Willie that he was not going to *let* Willie do anything to him.

¶7. Dante stated that his mother called him that night and told him that Willie had "just left [her] house, threatened to kill me, and [said] when he catch me he was going to kill me." According to Dante, his mother warned "don't let [Willie] do nothing to you, son, you know your uncle be sneaky, watch your back." Dante testified that he took his mother's warning seriously, and he believed that Willie was a real threat. Dante testified that he obtained a pistol that night because he knew Willie wanted to kill him and he needed protection. He denied that his mother asked him to leave Willie alone, and he denied telling her that he was going to "do" or "punish" Willie.

¶8. Dante also testified about what happened the day of the shooting. Tiffany called him that morning and told him that Willie came to Evans's house. Dante testified that Willie told Tiffany "since she went and called the police and played police games" she had an hour to get her things and car and leave or he was "gonna to come back and beat the 'F' out of her."

¶9. Dante told Tiffany that he was on his way to Evans's house, and he drove there in his vehicle. When Dante arrived at Evans's house, Evans, Maya, and their neighbor were sitting

under a tree near the road playing cards. Dante testified that he tried to get Tiffany to leave Evans's house with him, but she did not want to leave because she was waiting on someone to come move her vehicle; she did not want to leave her vehicle because Willie had threatened to damage it or have it towed. Dante told Tiffany that he was going to wait on her. He drove to the store to get more cigarettes because he was anxious and "did not want to stay in that spot too long" given that Willie was looking for him. Dante testified that he did not think Willie was near Evans's house because he heard that Willie was looking for him at his mother's house.

¶10. After getting cigarettes, Dante returned to Evans's house, parked the vehicle in the driveway, and waited on Tiffany. Again, he called Tiffany to try to get her to leave with him, but she did not want to leave because she was still worried about her vehicle. Dante then got out of the vehicle to smoke a cigarette, and he walked to the side of the house to use the bathroom. On his way back to his vehicle, he saw Tawana Harper, his aunt's cousin. Harper testified that she had just arrived at Evans's house. After saying hello, Harper went inside the house, and, not long after, she heard a noise. She went outside and saw Willie lying on the sidewalk.

¶11. Maya testified that she was sitting outside under the tree with her mother and their neighbor, Leon Cox, when the shooting occurred. Maya saw Dante sitting on his vehicle for about five minutes before the shooting, but she did not see Dante holding a gun when he arrived. She testified that she saw Willie "walking very fast" toward Dante from behind the

house, yelling, and "charging at [Dante] with his fists." Dante was sitting on the vehicle at first, but he started walking toward Willie when Willie charged him. Maya testified that Dante shot Willie "when they got very close together," then got in his vehicle and left. Maya testified that it happened so fast that she did "not really" see the gun. She also testified that she did not hear Dante or Willie say anything to each other.

¶12. Evans testified that she and Cox were sitting at the table under a tree when she saw Dante park in the driveway, get out, and sit on the vehicle. She then saw Willie come "from around the house" to her house. She testified that he visited every day. Willie saw Dante and walked toward him. And when Dante noticed Willie, he walked toward him; Evans thought they were about to fight. Evans heard a gunshot and saw Willie on the ground. Evans also testified that she did not actually see the gun, and she did not hear what, if anything, Willie or Dante said during the incident. She testified that "it went so fast" that she "couldn't even tell" how much time passed between Willie walking from behind the house until the shot.

¶13. Cox testified that he lived two houses down from Evans. He was sitting outside under the tree with Evans and Maya during the incident. Cox recalled that he was sitting there talking to Evans and heard a shot, stating "That's pretty much all I know." He also testified that he was facing the road with his back to the house, and he did not really hear or see anything.

¶14. Dante admitted that he shot Willie with a .40 caliber handgun. He testified that after he "used the bathroom" on the side of the house, he returned to his vehicle and sat on the

trunk looking toward the street. He "had a feeling" telling him to turn around; and when he turned around, he saw Willie charging at him saying "I got you're a-S-S now . . . ." Dante explained "that's when I just pulled out my gun and I shot him. I tried to hit him in his leg, but the fact that he is charging me, running up on me, I guess it kind of went up and hit him in the stomach." Willie was unarmed.

¶15. Dante testified that, "I didn't know if he had anything or not. It's just my life was threatened. And as big as he is, he could have did anything to me." Dante weighed between 140 and 160 pounds. According to Willie's autopsy report, Willie was 5' 10" tall, muscular, and weighed 290 pounds. Dante testified he did not intend to kill Willie. He explained that, "I was just trying to stop him. . . . I didn't want him to do nothing to me because for one, you know, he already twice my size at that time. And he threatened to kill me, so I was just defending myself."

¶16. Dante acknowledged that he left the house in his vehicle after he shot Willie and that he wrapped the gun in a shirt and threw it out of the vehicle. He explained that he threw the gun because he could see police coming, he was scared, and he did not want to risk being shot by police if they saw him with a gun. Dante's mother testified that she talked to Dante after the shooting, and Dante told her that "Willie was approaching him" and "he pat[ted] his pocket." Dante also told her that he pulled out the gun and pointed it at Willie's chest. He did not say he pulled the trigger.

¶17. Dr. Mark LeVaughn testified about Willie's autopsy as an expert witness in the field

of forensic pathology. He stated that Willie suffered a single gunshot wound to the abdomen, "right in the vicinity of the belly button." There was no exit wound. Dr. LeVaughn opined that the cause of Willie's death was the gunshot wound, and the manner of death was homicide. Dr. LeVaughn further testified that no stippling or "muzzle flash" was visible on Willie's body, which indicated that the barrel of the gun was more than two or three feet away.

¶18. The jury received instructions on first-degree murder, second-degree murder, imperfect self-defense manslaughter, and self-defense. After deliberations, the jury returned a verdict finding Dante guilty of first-degree murder.

DISCUSSION

1. Weight of the Evidence

¶19. Dante did not raise the issue of weight of the evidence in his motion for a new trial. Instead, he challenged the sufficiency of the evidence and the trial court's grant of instruction S-13 and denial of instructions D-10 and D-20. Consequently, his argument is procedurally barred. *See Davis v. State*, 43 So. 3d 1116, 1122 (¶19) (Miss. 2010) (finding that failure to present to the circuit court a motion for new trial regarding the weight of the evidence renders the issue procedurally barred).

2. Instruction S-13

¶20. Dante argues that instruction S-13, a pre-arming instruction, should not have been given because pre-arming instructions have repeatedly been denounced by our supreme court.

See, e.g., *Boston v. State*, 234 So. 3d 1231, 1234 (¶¶8-10) (Miss. 2017). Dante also argues that the granting of jury instruction S-13 was error because it prevented him from claiming self-defense.

¶21. The decision to give or refuse jury instructions is within the discretion of the trial court, and the well-settled standard of review is abuse of discretion. *Moody v. State*, 202 So. 3d 1235, 1236-37 (¶7) (Miss. 2016). We must review jury instructions as a whole to ascertain whether the jury was fully and fairly instructed regarding the applicable law. *Conner v. State*, 138 So. 3d 143, 149 (¶13) (Miss. 2014). "We will not find error if the instructions fairly, though not perfectly, announce the applicable rules of law." *Id.* at (¶14). "A criminal defendant is entitled to present his defense to the finder of fact." *Keys v. State*, 635 So. 2d 845, 848 (Miss. 1994).

¶22. Instruction S-13 reads:

> 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 with the design and felonious intent to cause serious bodily harm to Willie Lee Taylor, then the Defendant, Dante O'Bryan Taylor, cannot invoke the law of self-defense.

¶23. A pre-arming instruction should only be used in "extremely rare incidents where the instruction was supported by the evidence." *Dew v. State*, 748 So. 2d 751, 754 (Miss. 1999). *see also Hart v. State*, 637 So. 2d 1329, 1332 (Miss. 1994); *Hall v. State*, 420 So. 2d 1381, 1388 (Miss. 1982); *Reid v. State*, 301 So. 2d 561, 564 (Miss. 1974); *Jobe v. State*, 97 So. 3d

1267, 1269 (¶9) (Miss. Ct. App. 2012). The purpose of a pre-arming instruction is "to inform the fact-finder that one cannot arm himself in advance when he is not in any physical danger, go forth and provoke a confrontation or difficulty with another, shoot the other, and then attempt to hide behind a smoke screen of self-defense." *Hart*, 637 So. 2d at 1337.

¶24. The Mississippi Supreme Court affirmed the use of an identical instruction in *Hall*, 420 So. 2d at 1386. In that case, Hall shot at two men who rented a trailer from him. *Id.* at 1384. He claimed that he fired the two shots "in an effort to scare them and give himself a chance to leave." *Id.* No one was hit. *Id.* Hall was indicted for aggravated assault. *Id.* at 1382. The record showed that "Hall left his employment, armed himself with a shotgun[, and] went to [the victim's] home after having been warned by his wife that they had threatened to mess him up if he came to the house . . . ." *Id.* at 1385 (internal quotation marks omitted).

¶25. More recently, this Court affirmed the use of a pre-arming instruction in *Jobe*, 97 So. 3d at 1270 (¶14). Jobe was angry over some missing meat at a cookout. *Id.* at 1269 (¶3). He grabbed a knife from a kitchen drawer and went outside to "handle" it, ultimately stabbing the victim. *Id.* This Court approved the use of the instruction because Jobe grabbed the knife when he was in no physical danger, went outside, and said he would "handle this." *Id.* at 1270 (¶13).

¶26. Here, testimony from witnesses showed that Dante armed himself when he was not in any physical danger, went to a house that Willie visited every day (which was also right

next to Willie's house), sat in front of that house with a gun in his back pocket, and then shot Willie from at least two feet away. Dante's mother testified that, the night before the shooting, Dante had threatened to "punish" or "do" Willie. And Dante testified that he got a pistol that same night after talking to his mother. Based on Mississippi precedent, we find the evidence here supported the court's decision to give a pre-arming instruction.

¶27. The instruction given did not preempt Dante's self-defense claim but submitted the issue to the jury for its determination. *See Hall*, 420 So. 2d at 1385. Further, Dante also received an imperfect self-defense instruction. The jury rejected both of those theories. After review, we find the trial court did not abuse its discretion in granting the pre-arming instruction.

3. Instructions D-10 and D-20

¶28. Dante argues that the trial judge's refusal to grant his proposed instructions D-19 and 20 was reversible error because both instructions supported an important theory of his defense—that Willie was much larger than Dante and "capable of causing serious bodily injury with his hands and fists." Testimony revealed that Willie was 5'10" tall and weighed 290 pounds when he was killed. During his interview with police, Dante reported that he weighed 160 pounds. Nothing in the record revealed Dante's height.

¶29. Instruction D-19 reads as follows:

> 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.

¶30. Instruction D-20 similarly reads:

> 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 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.

The trial court denied D-19 and D-20, finding that Dante's theories of self-defense were adequately covered elsewhere. Dante's proposed instructions have been approved in other cases only "when supported by evidence and [when] no other instruction properly presents the defendant's theory." *Robinson v. State*, 858 So. 2d 887, 897 (¶42) (Miss. Ct. App. 2003). In *Robinson*, the court affirmed a similar self-defense instruction based on evidence that Robinson and his victim were actually engaged in a physical struggle when the victim was stabbed. *Id.* at 891. Here, there was no physical struggle between Dante and Willie; the evidence showed that Dante shot Willie from at least two feet away. Further, Dante's theory of self-defense was properly presented in Instruction S-10:

> The Court instructs the jury that to make a killing justifiable on the ground of self-defense, the danger to the defendant must be either actual, present and urgent, or the defendant must have reasonable grounds to believe the victim intended to kill the defendant or to do him some great bodily harm, and in addition to this, he must have reasonable grounds to believe there is imminent

danger of such act being accomplished . . . .

Reviewing jury instructions as a whole, we find that the jury was fully and fairly instructed regarding the applicable law.

¶31. **AFFIRMED.**

LEE, C.J., IRVING AND GRIFFIS, P.JJ., BARNES, WILSON AND GREENLEE, JJ., CONCUR. CARLTON, J., DISSENTS WITH SEPARATE WRITTEN OPINION, JOINED BY WESTBROOKS AND TINDELL, JJ.

CARLTON, J., DISSENTING:

¶32. I respectfully dissent from the majority's decision to affirm Taylor's conviction for first-degree murder and his sentence of life without eligibility for parole in the custody of the MDOC. I find that the trial court abused its discretion and committed reversible error by giving jury instruction S-13, the "pre-arming" instruction. I would therefore reverse Taylor's conviction and remand this case for a new trial.

¶33. It is well-settled that "[j]ury instructions are generally within the discretion of the trial court, and the . . . standard of review is abuse of discretion." *Boston v. State*, 234 So. 3d 1231, 1233 (¶7) (Miss. 2017) (quoting *Moody v. State*, 202 So. 3d 1235, 1236-37 (¶7) (Miss. 2016)). "Jury instructions must fairly announce the law of the case and not create an injustice against the defendant." *Id.* (quoting *Davis v. State*, 18 So. 3d 842, 847 (¶14) (Miss. 2009)). The supreme court "has condemned outright the granting of any [jury] instruction that precludes a defendant from asserting a claim of self-defense[,]" explaining that "[a] criminal defendant is entitled to present his defense to the finder of fact." *Johnson v. State*,

908 So. 2d 758, 762 (¶15) (Miss. 2005) (quoting *Keys v. State*, 635 So. 2d 845, 848 (Miss. 1984)).

¶34. In the present case, the State submitted jury instruction S-3, which provided as follows:

> 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 with the design and felonious intent to cause serious bodily harm to Willie Lee Taylor, then the Defendant, Dante O'Bryan Taylor, cannot invoke the law of self-defense.

Taylor's defense counsel argued that a pre-arming instruction impermissibly commented on the evidence and was unsupported by the evidence. However, the trial court granted instruction, explaining that:

> there's conflicting testimony or it can be inferentially argued based upon the mother's testimony about what [Taylor] told her about his . . . intent or plans to go punish [Willie] or set it right, whatever the testimony was, which my appreciation was that there was some malice aforethought going on, perhaps. Which a jury could make a legal inference that that's why he had that weapon.

¶35. The supreme court has held that "even if the great weight of evidence against the defendant supports a contrary view, the defendant is still entitled to present his defense to the jury unimpaired by instructions that preclude his right to self-defense." *Boston*, 234 So. 3d at 1234 (¶11) (quoting *Dew*, 748 So. 2d at 754 (¶19)). Additionally, in *Boston*, the supreme court explained that a pre-arming instruction is appropriate only where "[t]he record [is] uncontradicted that the defendants armed themselves with the intent to initiate a

confrontation." *Id.* at 1235 (¶12). Here, the record reflects that the evidence presented at trial created a conflict as to whether Dante armed himself with the intention of initiating a confrontation with Willie and as to whether Dante was the initial aggressor. Dante testified at trial that his mother called him the night before the shooting and warned him that Willie had come to her house looking for Dante and that Willie had threatened to kill him.

¶36. I therefore find that the trial court abused its discretion and committed reversible error in granting jury instruction S-3. I would therefore reverse Taylor's conviction and remand this case for a new trial.

WESTBROOKS AND TINDELL, JJ., JOIN THIS OPINION.

APPENDIX B

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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

DANTE O. TAYLOR — APPELLANT

V. — NO. 2017-KA-01596-COA

STATE OF MISSISSIPPI — APPELLEE

MOTION FOR REHEARING

OFFICE OF STATE PUBLIC DEFENDER
INDIGENT APPEALS DIVISION
Hunter N. Aikens, Miss. Bar No. 102195
P.O. Box 3510
Jackson, Mississippi 39207-3510
Phone: 601-576-4200
Fax: 601-576-4205
email: haike@ospd.ms.gov

Counsel for Donte O. Taylor

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

DANTE O. TAYLOR **APPELLANT**

V. **NO. 2017-KA-01596-COA**

STATE OF MISSISSIPPI **APPELLEE**

MOTION FOR REHEARING

COMES NOW the Appellant, Dante O. Taylor, in the above-styled matter, by and through counsel, pursuant to Rule 40 of the Mississippi Rules of Appellate Procedure, and files this Motion for Rehearing of the decision handed down by this Honorable Court on December 4, 2018, and in support thereof would show:

I. The trial court erred in granting an often condemned "pre-arming" instruction, which precluded or impaired Dante's theory of self defense.

In concluding that the trial court properly granted the pre-arming instruction, the majority opinion held:

> Here, the testimony from the witnesses showed that Dante armed himself when he was not in any physical danger, went to a house that Willie visited every day (which was also right next to Willie's house), sat in front of that house with a gun in his back pocket, and then shot Willie from at least two feet away. Dante's mother testified that, the night before the shooting, Dante had threatened to "punish" or "do" Willie. And Dante testified that he got a pistol that same night after talking to his mother. Based on Mississippi precedent, we find the evidence here supported the court's decision to give a pre-arming instruction.

Opinion at (¶[26).

The majority opinion's analysis overlooks numerous material facts pertinent to the issue. As Judge Carlton notes in her dissenting opinion, "the record reflects that the evidence presented at trial

created a conflict as to whether Dante armed himself with the intention of initiating a confrontation with Willie and as to whether Dante was the initial aggressor." Opinion at (¶35) (Carlton, J., Dissenting).

The evidence conflicted as to whether Dante armed himself with the intent to initiate a confrontation with Willie. The majority opinion overlooks that Dante testified that his mother called him the night before the shooting and told him that Willie had "just left [her] house, threatened to kill me, and [said] when he catch me he was going to kill me." (Tr. 193). The majority points to Dante's mother testimony that Dante threatened to "punish" or "do" Willie; the majority overlooks, however, that Dante denied telling his mother that he was going "to do him" or "punish him." (Tr. 198-99, 206).[1] Dante also testified that he took Willie's threat seriously and that he got the gun to protect himself in case Willie was able to find him to follow through on the threat. (Tr. 193-94, 206, 210). Dante's mother acknowledged that she knew Willie was looking for Dante and wanted to hurt him. (Tr. 133-34). Dante also specifically testified that he went to Evans' house with the intent to help his sister[2] and to actually avoid Willie (not encounter or provoke a confrontation with Willie), as Dante was told that Willie was headed to Dante's mother's house looking for him at the time. (Tr. 204-05, 208).

As Judge Carlton's dissent accurately observes, "a pre-arming instruction is appropriate only

---

[1] Dante explained that he only said Willie needed to be punished, not that he was going to punish Willie: "I didn't tell my momma I was going to punish him. I said he needed to be punished, but I didn't say I was going to do it." (Tr. 199, 206). Dante also testified that he told his mother he was not going to let Willie do anything to him, not that he was "going to do" Willie. (Tr. 199).

[2] Dante testified that, on the morning of the shooting, his sister called and said Willie had threatened to come and "beat the F out of her" because she called police on him the night before. (Tr. 194-95). Dante testified that he went to Evans' house to try to get his sister to leave with him while Willie was headed to Dante's mother's house looking for Dante. (Tr. 196, 208).

where '[t]he record [is] uncontradicted that the defendants armed themselves with the intent to initiate a confrontation.'" Opinion at (¶35) (quoting *Boston v. State*, 234 So. 3d 1231, 1235 (¶12) (Miss. 2017)). In this case, there was evidence that Dante armed himself only to protect himself and that Dante went to Evan's house to help his sister and to actually avoid Willie–not encounter or initiate a confrontation with Willie. As Judge Carlton's dissent further notes, the trial court itself deemed the evidence conflicting on this point. Opinion at (¶34). "This is a case containing disputed facts regarding [Dante's] self-defense, and this issue [] should be presented to the jury by conventional self-defense instructions." *Johnson v. State*, 908 So. 2d 758, 763 (Miss. 2005) (citing *Keys v. State*, 635 So. 2d 845, 849 (Miss. 1994). It is not important whether the trial judge thinks appellant's story is plausible. This is the jury's job." *Lenard v. State*, 552 So. 2d 93, 97–98 (Miss. 1989).

The evidence also established that Willie, not Dante, was the initial aggressor. At worst, the evidence was ambiguous as to who was the initial aggressor. The majority's analysis states that Dante sat at the house with a gun "and then shot Willie from at least two feet away." Opinion at (¶26). The majority overlooks that the evidence established that Willie emerged from behind the house and charged at Dante. Maya testified that she saw Willie "walking very fast" from behind the house, yelling and "charging at him [Dante] with his fists." (Tr. 110-11,121-22). Dante testified that he turned around to find Willie charging at him and threatening "I got you're A-S-S now." (Tr. 197, 210). Additionally, Dante's mother testified that, after the shooting, Dante told her that Willie "patted his pocket" as he was approaching Dante. (Tr. 130).

"[W]hen there is ambiguity regarding who is the first aggressor, a pre-arming instruction is not appropriate." *Johnson v. State*, 908 So. 2d 758, 762 (¶15) (Miss. 2005) (citing *Dew v. State*, 748 So. 2d 751, 754 (Miss. 1999)); *see also*, *Barnes v. State*, 457 So. 2d 1347, 1349–50 (Miss. 1984).

In this case, there was evidence that Willie, not Dante was the initial aggressor. At worst, the evidence on this point was ambiguous. Thus, a pre-arming instruction was not appropriate, and the trial court erred in granting the pre-arming instruction for this reason also.

Finally, the majority opinion reasons that the pre-arming instruction "did not preempt Dante's self-defense claim but submitted the issue to the jury for its determination." Opinion at (¶27) (citing *Hall v. State*, 420 So. 2d 1381, 1385 (Miss. 1982)). The majority's reasoning on this point misapprehends the law. "The rationale for caution regarding a pre-arming instruction is that in effect it is a peremptory instruction for the prosecution, impairing or precluding the defendant's right to self-defense." *Dew*, 748 So. 2d at 754 (citing *Keys*, 635 So. 2d at 849); *see also Boston*, 234 So. 3d at 1234 (¶9). Additionally, pre-arming "'instructions such as [these] place a higher burden on a defendant to assert a claim of self-defense than is required by our law. It allows certain parts of the evidence to be considered while omitting other parts advantageous to the defendant's case.'" *Johnson*, 908 So. 2d at 762 (¶15) (quoting *Keys*, at 849). Furthermore, the improper grant of a pre-arming instruction in conjunction with other [proper] instructions, is not cured by the other instructions; instead, the pre-arming instruction makes the instructions, as a whole, inconsistent, misleading and confusing. *See, e.g.*, *Keys*, at 849; *Thompson v. State*, 602 So. 2d 1185, 1190 (Miss. 1992).

Dante submits that the majority opinion overlooked material facts and misapprehended the law in finding that the trial court did not err in granting the pre-arming instruction. The evidence was not uncontradicted as to whether Dante intended to initiate a confrontation with Willie and as to whether Dante was the initial aggressor. As Judge Carlton's dissent observes, "'[e]ven if the great weight of evidence against the defendant supports a contrary view, the defendant is still entitled to present his defense to the jury unimpaired by instructions that preclude his right to self-defense.'"

Opinion at (¶35) (quoting *Boston*, 234 So. 3d at 1234 (¶11)). This case does not present the rare circumstances in which the grant of a pre-arming instruction is appropriate and not reversal error. "'This type of pre-arming instruction has repeatedly been denounced by [our supreme court].'" *Boston*, at 1234 (¶10) (quoting *Johnson*, 908 So. 2d at 762 (¶15)). And our supreme court "'[h]as stated numerous times that when the State seeks this instruction, it does so at its own peril.'" *Id.*, (quoting *Johnson*, at 763 (¶19)). The majority opinion in this case conflicts with the decisions of our supreme court in *Boston*, *Johnson*, *Dew* and *Keys*. Accordingly, Dante requests this Court to grant rehearing and to hand down a new opinion reversing and remanding this case for a new trial due to the trial court's error in giving a pre-arming instruction.

II. The trial court erred in refusing instructions D-19 and D-20.

The trial court erred in refusing instructions D-19 and D-20, which would have properly and fairly informed the jury that Dante was permitted to claim self-defense even though Willie was unarmed if Dante reasonable feared serious bodily injury at the hands of Willie, a much larger man.

The opinion in this case finds that the trial court properly refused instructions D-19 and D-20 for two reasons. First, the opinion reasons that "[t]here was no physical struggle between Dante and Willie; the evidence showed that Dante shot Willie from at least two feet away." Opinion at (¶30). The opinion overlooks that the evidence showed that immediately before the shot, Willie emerged from behind a house and was charging Dante with his fists while threatening "I got you're ASS now." (Tr. 110-11, 121-22, 197, 210). The opinion also overlooks that Dante's mother testified that Dante told her that Willie "patted his pocket" as he was approaching Dante. (Tr. 130).

Under the opinion's reasoning, a person must wait until they have been assaulted before they are entitled to use force to defend themself. That is a misapprehension of the law. Under Mississippi law, Dante had the right to anticipate an attack and to act upon reasonable appearances.

See, e.g., *Lee v. State*, 232 Miss. 717, 724, 100 So. 2d 358, 361 (1958) ("The appellant had the right to anticipate the acts of the intruder and to act upon what then reasonably appeared to be necessary for the protection of his life.") (citing *Lomax v. State*, 205 Miss. 635, 642, 39 So. 2d 267, 269 (1949); *Bell v. State*, 207 Miss. 518, 529, 42 So. 2d 728, 732 (Miss. 1949) ("'[T]he danger need not be actual, but only reasonably apparent and imminent. . . . The law authorizes action on reasonable appearances[.]'") (citing *Scott v. State*, 203 Miss. 349, 353-54, 34 So. 2d 718, 719 (1948)).

It is undisputed that Willie was much larger than Dante. Willie weighed 290 pounds and Dante weighed between 140 and 160 pounds. (Tr. 180, 199-200). And in furtherance of his defense, Dante testified that Willie's size was a significant factor in his fear and decision to use the gun: "I was just trying to stop him. . . I didn't want him to do nothing to me because for one, you know, *he already twice my size at that time*. And he threatened to kill me, so I was just defending myself." (Tr. 198) (emphasis added). Dante also testified that "I didn't know if he had anything or not. It's just my life was threatened. *And as big as he is*, he could have did anything to me." (Tr. 205) (emphasis added).

The opinion also finds no error in the refusal of instructions D-19 and D-20 on the reasoning that "[D]ante's theory of self-defense was properly presented in Instruction S-10 [a general instruction on the definition of self-defense.]" Opinion at (¶30). The opinion overlooks that a general self-defense instruction does not obviate the error in refusing instructions such as D-19 and D-20 where, as here, the defendant claims (and presents evidence) that he was justified in using a deadly weapon against a larger unarmed person. *Robinson v. State*, 858 So. 2d 887, 898-99 (¶¶46-50) (Miss. Ct. App. 2003). Here, as in *Robinson*, "[t]he most important part of the defense was not explained, namely, that the defendant was justified in using a deadly weapon against the larger and intimidating [Willie] if [Dante] reasonably perceived that he was in danger of death or serious bodily

injury from [Willie's] fists." *Robinson*, at 899 (¶51).

The opinion also overlooks how the denial of instructions D-19 and D-20 prejudiced Dante's defense. During closing argument, the State opportunistically capitalized on the refusal of the instructions by unfairly arguing:

> Willie Taylor put his hands [fists] up. This defendant pulled out a gun and shot him. Ladies and gentlemen, that can't be an excuse to take someone's life. Do you know how many fights happen every day down here on the Mississippi Gulf Coast? Some end in fist fights. That doesn't give somebody the right to take somebody's life. . ..
>
> [He] never saw a knife, never saw a gun, that's because Willie didn't have any of those. He thought at most this was going to be a fist fight with a guy who was trash talking him.

(Tr. 257; 262-63). Dante's defense was further prejudiced because the trial court granted the State an instruction (S-11), which permitted the jury to find that the use of deadly weapon was unjustified as excessive force: "The Court instructs the jury that a person may not use more force than necessary to save life or protect himself from great bodily harm. The question of whether he was justified in the weapon is for determination by the jury. . . ." (C.P. 150).

"'[I]t is, of course, an absolute right of an accused to have every lawful defense he asserts, even though based upon meager evidence and highly unlikely, to be submitted as a factual issue to be determined by the jury under proper instruction of the court. This Court will never permit an accused to be denied this fundamental right.'" *Chinn v. State*, 958 So. 2d 1223, 1225 (¶13) (Miss. 2007) (quoting *O'Bryant v. State*, 530 So. 2d 129, 133 (Miss. 1988)). At Dante's trial, a critical aspect of his defense was that Willie was a much larger man who was capable of inflicting serious bodily injury upon Dante with his hands and fists. Under Mississippi law, Dante was justified in defending himself with a gun if he reasonably believed that Willie posed a reasonably apparent and imminent danger of causing serious bodily injury with his hands or fists.

Dante maintains that the trial court erred in refusing instructions D-19 and D-20, and he requests this Court to grant rehearing and issue a new opinion reversing and remanding this case for a new trial.

CONCLUSION

The Appellant, Dante Taylor, submits that the foregoing propositions warrant the grant of this Motion for Rehearing. He requests this Court to withdraw its original opinion and substitute a new opinion reversing his conviction and sentence and remanding this case for a new trial.

WHEREFORE, PREMISES CONSIDERED, Appellant requests this Honorable Court to grant this Motion for Rehearing.

Respectfully submitted,

OFFICE OF STATE PUBLIC DEFENDER
INDIGENT APPEALS DIVISION
For Dante O. Taylor, Appellant

BY: /s/ Hunter N. Aikens
Hunter N. Aikens, Miss. Bar 102195

OFFICE OF STATE PUBLIC DEFENDER
INDIGENT APPEALS DIVISION
P.O. Box 3510
Jackson MS 39207-3510
Phone: 601-576-4200
Email: haike@ospd.ms.gov

CERTIFICATE OF SERVICE

I, Hunter N. Aikens, Counsel for Dante O. Taylor, do hereby certify that I have this day electronically filed the foregoing **Motion for Rehearing** with the Clerk of the Court using the MEC system which issued electronic notification of such filing to:

Honorable Jason L. Davis
Attorney General Office
Post Office Box 220
Jackson, MS 39205-0220

So certified, this the 14th day of December, 2018.

/s/ Hunter N. Aikens
Hunter N. Aikens; Miss. Bar 102195
COUNSEL FOR APPELLANT

OFFICE OF STATE PUBLIC DEFENDER
INDIGENT APPEALS DIVISION
P.O. Box 3510
Jackson MS 39207-3510
Phone: 601 576-4200
Fax: 601-576-4205
Email: haike@ospd.ms.gov

APPENDIX C

Supreme Court of Mississippi
Court of Appeals of the State of Mississippi
Office of the Clerk

D. Jeremy Whitmire
Post Office Box 249
Jackson, Mississippi 39205-0249
Telephone: (601) 359-3694
Facsimile: (601) 359-2407

(Street Address)
450 High Street
Jackson, Mississippi 39201-1082

e-mail:sctclerk@courts.ms.gov

April 2, 2019

This is to advise you that the Mississippi Court of Appeals rendered the following decision on the 2nd day of April, 2019.

Court of Appeals Case # 2017-KA-01596-COA
Trial Court Case # B2401-2016-102

Dante O. Taylor a/k/a Dante O'Bryan Taylor a/k/a Dante O'Brien Taylor a/k/a Dante Taylor v. State of Mississippi

Current Location:
MDOC #138016
P.O. Box 1419
Leakesville, MS 39451

The motion for rehearing is denied. Carlton, P.J., and Tindell, J., would grant. McDonald, McCarty and C. Wilson, JJ., not participating.

* NOTICE TO CHANCERY/CIRCUIT/COUNTY COURT CLERKS *
If an original of any exhibit other than photos was sent to the Supreme Court Clerk and should now be returned to you, please advise this office in writing immediately.

Please note: Pursuant to MRAP 45(c), amended effective July, 1, 2010, copies of opinions will not be mailed. Any opinion rendered may be found by visiting the Court's website at: https://courts.ms.gov, and selecting the appropriate date the opinion was rendered under the category "Decisions."