



IN THE SUPREME COURT OF THE STATE OF DELAWARE

ATIBA MAYFIELD, :
 :
 :
 Defendant-Below, :
 Appellant, :
 :
 v. : No. 546, 2016
 :
 STATE OF DELAWARE, :
 :
 :
 Plaintiff-Below, :
 Appellee. :

Upon Appeal from the Superior Court of the State of Delaware to the
Supreme Court of Delaware

APPELLANT'S REPLY BRIEF

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Dated: July 17, 2017

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ARGUMENT I

THE LOWER COURT ERRED AS A MATTER OF LAW IN DENYING APPELLANT'S REQUESTS FOR JURY INSTRUCTIONS BASED ON JUSTIFICATION DEFENSES OF DEFENSE OF SELF AND DEFENSE OF OTHERS.

In its Answering Brief, the State contends that Appellant Mayfield did not present any credible evidence to support justification defenses requiring an instruction to the jury. Appellant strongly disagrees. While the State's theory of the case was that the Raekwan Mangrum homicide was the result of an intentional and premeditated drive-by type shooting, that was only one of the theories of the case presented at trial. The record below indicates that Appellant Mayfield presented a justification defense theory based upon his April 5, 2015¹ statement to police officers that the State played for the jury coupled with reasonable inferences drawn from other evidence adduced at trial. Given the trial court's denial of Appellant's request for a jury instruction on justification for defense of self and others in light of an evidentiary basis for such instructions, Appellant Mayfield's convictions must be reversed and this case be remanded for a new trial.

Title 11 Del.C. § 303(c) states the following:

If some credible evidence supporting a defense is presented, the defendant is entitled to a jury instruction that the jury must acquit the defendnat if they find that

¹ A271-344.

the evidence raises a reasonable doubt as to the defendant's guilt.

Citing to State v. Montanez², the State concedes that the quantum of evidence necessary to entitle a defendant to a jury instruction on justification is negligible, namely, some "applicable evidence no matter how weak or incredible."³ Thus, under Delaware law, so long as "some credible evidence supporting the defense has been presented,"⁴ the requested instruction must be given to the jury.

Appellant Mayfield's justification defense theory was predicated on his statement to police that he went to meet Raekwan Mangrum on April 4, 2015 to resolve a dispute he had with him stemming from Mangrum's shooting Mayfield in the leg on March 21, 2015.⁵ Mayfield related that he went to South Monroe Street to settle his "beef" with Mangrum through a fistfight, "hand to hand like a man."⁶ Upon arrival, Mayfield exited the car and he and Mangrum began their hand to hand fight when Mangrum unexpectedly pulled out a gun.⁷ While tussling with Mangrum over the handgun, Mayfield heard multiple shots fired by a person ultimately identified as Nicodemus Morris.⁸ Mayfield further explained that after he had taken the handgun from Mangrum, he saw Michael Broomer shooting a

² 894 A.2d 928 (Conn. 2008).

³ Id. at 938, citing State v. Wright, 822 A.2d 940, 946 (Conn.App. 2003). [See State's Answering Brief at page 30.]

⁴ 11 Del.C. § 303(a).

⁵ A193-194,267

⁶ A272, 330.

⁷ A272-273, 295,340.

⁸ A272-275, 287, 295.

handgun back at Morris since Morris had been shooting in their direction and was the “primary threat” at the time.⁹ Since a factual scenario existed based upon this evidence adduced at trial that Broomer shot at Morris after Morris first fired a gun in the direction of Mayfield and Broomer, it is submitted that sufficient evidence was developed at trial to warrant Appellant’s requested jury instruction based on justification for defense of self (Broomer) and others (Mayfield).¹⁰

Additional evidence elicited at trial supports Appellant Mayfield’s scenario of a fistfight that was escalated by the introduction of firearms by Mangrum and Morris. At trial, Tyezghaire Stevens testified to Mangrum’s reputation for fighting.¹¹ There was unrebutted testimony from Mayfield that Mangrum’s mother had arranged for the fistfight to take place.¹² Fingernail scrappings from Mangrums hands and Mayfield’s blood on his own clothing were consistent with

⁹ A340.

¹⁰ Despite the State’s claim that defense counsel failed to seek a justification defense of others instruction (See State’s Answering Brief at page 25), defense counsel in fact did make such a request at the Prayer Conference regarding Jury Instructions. See A389-393 generally; and page 191 on A392 – “So I would request that justification of self -- ***even potentially defense of others*** if he was shooting in the direction of the vehicle which was occupied also by -- by Broomer when Nicodemus Morris was shooting in that direction.” See also page 195 on A393 – “Like Broomer for ***defense of others***, if -- if he’s being shot at, even if he was being shot at himself and he goes I’m not going to be shot at; I’m going to defend myself; he shoots back. I think he’s justified. If you’ve got Mayfield standing there and Mayfields’s fight with Mangrum precipitated the – the gunfire by Morris and ***he’s shooting to protect not only himself but Atiba Mayfield, I think that goes to defense of other – justification of defense of others in addition to self.***” [Emphasis added.]

¹¹ AA231.

¹² A272.

an actual hand to hand fight having taken place.¹³ Mayfield testified to Mangrum producing a handgun during the fistfight and shortly thereafter to Morris firing shots in the direction of himself and Broomer.¹⁴ Furthermore, Nicodemus Morris admitted that Mangrum owned a .380 caliber Cobra handgun that he stated looked very much like the Cobra recovered by the police following their pursuit of Mayfield and Broomer.¹⁵ Also, Mangrum's history for violence and possession of handguns, both of which were known by Mayfield as well as Broomer, provided evidence of a subjective basis for Mayfield and Broomer to fear for their lives when Mangrum introduced a handgun into the fistfight and Morris opened fire on Mayfield and Broomer.

While the State may contest the factual scenario presented by Mayfield, their arguments that Mayfield's version of events should not be believed does not change the fact that a jury is free to accept or reject some of or all of his statement to the police. Since the jury is the trier of fact and arbiters of the credibility of all witnesses, the lower court erred as a matter of law in not instructing the jury on Appellant Mayfield's proposed justification defenses, which would have permitted the jury to perform their duty and weigh and consider not only the physical evidence in the case at bar, but also the credibility of all witnesses who testified

¹³ A92, 176, 179.

¹⁴ A272-273, 275, 287, 295.

¹⁵ A57, 173.

relevant to the shooting.¹⁶ The lower court's denial of the requested justification instructions constituted a violation of Appellant Mayfield's rights to due process of law guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, § 7 of the Delaware Constitution.

For the foregoing reasons, Appellant Mayfield's convictions must be vacated and reversed and this case remanded to the Superior Court for a new trial with directions that Appellant Mayfield is entitled to jury instructions on justification for defense of self and defense of others.

¹⁶ The State's theory of the case is not without contradictions. For example, the State argues that all .40 caliber casings were located north of a manhole cover near the intersection of the alleyway and South Monroe Street and all .9 mm casings were found south of the manhole cover, which would be consistent with a vehicle traveling northbound up South Monroe Street firing at Mangrum with the .40 caliber handgun. [A121-122, 125 and State's Exhibits 36, 37, 50, 52, 54, 56, 58, and 60.] Yet, Wilmington Police Officer Begany testified that when he turned onto South Monroe Street, he observed a blue Ford Focus stopped at the alleyway on South Monroe Street. He observed a black male standing outside the vehicle with his arm extended shooting a firearm towards the alley way and then possibly retreating down the alleyway or getting into the Ford Focus before it traveled north up South Monroe Street and turned right on the pedestrian walkway narrowly avoiding a collision with Officer Begany's patrol car. Officer Begany did not testify that he heard or saw gunshots being fired from the Ford Focus as it traveled north past the areas where the .40 caliber casings were found. [A236.] It was the jury's duty to attempt to make one harmonious story of all evidence presented. [A446.] They were unable to carry out this duty since they were not properly instructed on the law of justification.

ARGUMENT II

THE LOWER COURT ERRED AS A MATTER OF LAW IN DENYING APPELLANT’S REQUESTS FOR JURY INSTRUCTIONS ON LESSER INCLUDED OFFENSES FOR THE CHARGE OF MURDER FIRST DEGREE.

The State argues in its Answering Brief that Appellant Mayfield was not entitled to jury instructions on lesser included offenses of Murder First Degree because he claimed in his statement that he did not shoot Raekwan Mangrum and because there was no evidence presented that the .380 caliber handgun was ever fired based on the physical evidence adduced at trial. The State overlooks portions of the evidence presented.

The State’s claim that the .380 caliber Cobra handgun was never fired is not supported by the record below. Although the .380 firearm was found to be inoperative when found by the police, it was only inoperative because it had “stovepiped” after being fired. As indicated in Appellant’s Opening Brief, “stovepiping” occurs when a bullet is fired, but the spent casing fails to eject from the weapon and causes the weapon to become jammed, preventing it from firing.¹⁷ In testing the .380 Cobra, firearm experts were able to fire the weapon on two occasions proving that the gun was in fact operable.¹⁸ However, in both instances

¹⁷ A94, 101-103.

¹⁸ A259-260.

of test firing the handgun, it became jammed due to “stovepiping” caused by a defective ejector.¹⁹

Since the .380 handgun was capable of firing one shot before “stovepiping” or jamming, it is possible that Appellant Mayfield shot the weapon at least once. If the jury chose not believe Mayfield’s statement to police that he did not shoot at Mangrum, there was an evidentiary basis to conclude that he did shoot at Mangrum with the intention of striking him in the leg in retaliation for Mangrum previously having shot Mayfield in the leg on March 21, 2015.

Furthermore, the record below did provide a rational basis for lesser included offense instructions of Murder First Degree. As argued in Appellant’s Opening Brief, the jury could have chosen not to accept Mayfield’s claim that he did not shoot Mangrum and instead could have found that he shot Mangrum with a mental state less than that required for an intentional Murder First Degree. The lower court’s denial of the requested lesser included offense instructions constituted a violation of Appellant Mayfield’s rights to due process of law guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, § 7 of the Delaware Constitution.

Based on the foregoing, Appellant Mayfield’s convictions must be reversed and the case remanded to the Superior Court for a new trial.

¹⁹ A94-95, 258-260.

CONCLUSION

For the forgoing reasons, Appellant Atiba Mayfield respectfully requests that the Court (1) reverse the court below where it refused Mayfield's requested jury instructions; (2) vacate his sentence and remand for new trial; and, (3) grant such other relief as is just and proper.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT
AND TYPE-VOLUME LIMITATION**

1. This brief complies with the typeface requirement of Rule 13(a) because it has been prepared in Times New Roman 14-point typeface using Microsoft Word and reviewed by Microsoft Word for Mac 2011 Version 14.5.3.

2. This Reply Brief complies with the type-volume limitation of Rule 14(d) because it contains 1,827 words, as counted by Microsoft Word.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, John S. Malik, do hereby certify that on this 17th day of July A.D., 2017, I have had forwarded via File and Serve Express electronic delivery a copy of Appellant’s Reply Brief to the following individuals at the following address:

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