



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE of ARIZONA v. ANTAJUAN STEWART CARSON JR.
CR-17-0116-PR
242 Ariz. 6, 391 P.3d 1198 (App. 2017)**

PARTIES:

Petitioner/Cross-Respondent: Antajuan Stewart Carson Jr.

Respondent/Cross-Petitioner: State of Arizona

FACTS:

In October 2013, all three victims, J.M., S.B., and B.C., and Carson attended a party at a home in Tucson, Arizona. B.C. testified that he was merely acquainted with some of the people at the party, including Carson, and attended the party to serve as a deejay. The parties stipulated there was “animosity or bad blood” between Carson and J.M.

At the party, Carson told B.C. he had a nine-millimeter gun in his possession, and multiple witnesses saw Carson with a gun. A witness testified that she saw another individual with a gun. She stated that the individual she saw with a gun was asked to leave but she was unaware of whether that individual did leave.

Inside the house a group of four or five young men, including J.M. and S.B., confronted Carson. The confrontation turned into a shoving match, and the group moved outside. B.C. came around the side of the house; he saw Carson on the ground being hit and kicked by the other men. B.C., who was not part of the fight, pulled S.B. away from the fight and walked him across the street.

The court of appeals described the testimony about the shootings like this:

B.C. testified he then had seen the fighting stop, but yelling and screaming continued. Then a man in the area of the fight stood up, and B.C. heard a gun cock. Someone said “He has a gun,” and everyone started running. One witness testified the man getting jumped had “[p]ull[ed] out his gun so they could get off him” and then “[h]e started shooting.” The man shot J.M., who fell. J.M. tried to get back up and run away, but the man shot him again and he stayed down. B.C. was across the street when the man looked him in the eyes, pointed the gun at him, and shot him in the abdomen. Finally, the man shot and killed S.B. Based on eyewitness interviews and the locations of shell casings at the scene, the shooter moved his hand or changed positions from right to left while firing.

Op. ¶ 6 (footnote omitted). B.C. was transported to the hospital in his girlfriend T.C.'s car before police arrived at the scene.

Police found the bodies of J.M. and S.B. about one-and-one-half to two blocks apart, in opposite directions from the party house. The lack of soot or stippling around the entrance wounds on the decedents indicated either that the shots had been fired from more than three feet away, or that a heavy piece of fabric might have caught all the soot at closer range. There was no testimony that the victims were shot with the same gun, but no eyewitnesses reported seeing more than one person shooting that night. Police found ten nine-millimeter shell casings and one nine-millimeter live round at the scene. Police never found the murder weapon or weapons.

T.C. told police there were no guns in her car, but police then found a nine-millimeter gun and a .40-caliber gun in the car. A neighbor of the party house called the police the following day to report that he found a crushed .40-caliber casing. Police never tested the guns to determine whether they had been fired that night. Police also found a bloody knife near S.B.'s body and a bloody knife tucked inside his belt. Police did not test the knives for DNA or fingerprints. The jury questioned why the police failed to administer these tests.

The State charged Carson with two counts of second-degree murder for killing J.M. and S.B. and two counts of aggravated assault against B.C., alleging serious physical injury and use of a deadly weapon. At trial, several eyewitnesses identified Carson as the shooter and several others did not. Carson's primary defense was mistaken identity, but he also requested a self-defense justification instruction. The trial court denied the requested instruction reasoning that because Carson denied committing the act with which he was charged, he could not argue self-defense, citing *State v. Gilfillan*, 196 Ariz. 396, 407 (App. 2000).

The jury found Carson guilty as charged. The trial court sentenced Carson to concurrent terms, the longest being thirteen years.

On appeal, Carson argued that the trial court erred in refusing his self-defense justification instruction. A majority of the court found that the trial court correctly denied a justification instruction as to B.C., the surviving victim. Carson's justification theory as to B.C. necessarily relied on speculation, therefore, the majority found a justification instruction was not warranted. It affirmed Carson's convictions and sentences for aggravated assault.

With respect to J.M. and S.B., the court of appeals found that there was evidence from which a jury could find that Carson acted in self-defense and the trial court abused its discretion in denying a justification instruction as to them. The court of appeals also concluded that it is not legally impermissible for a defendant to assert both mistaken identity and justification defenses. It reversed Carson's second-degree murder convictions, and remanded for further proceedings.

The dissenting judge concurred with the majority in every respect but one: he would conclude that the trial record contained sufficient evidence to support Carson's requested self-defense instruction as to the aggravated assault charges involving B.C.

ISSUES:

Petition for Review:

Where circumstantial evidence leads to a reasonable inference that a defendant's use of force was justified, is that evidence sufficient to meet the "slightest evidence" standard entitling the defendant to receive a requested justification instruction?

Cross-Petition for Review:

Whether the court of appeals correctly held Carson was entitled to a self-defense instruction on two second-degree murder charges, when he asserted a mistaken identity defense, and when unrefuted evidence established the victims were more than 20 feet away and running from Carson when he shot them.

RELEVANT STATUTE and CASE LAW:

Use of physical force against another person is justified to protect oneself "when and to the extent a reasonable person would believe that physical force is immediately necessary to protect himself against the other's use or attempted use of unlawful physical force." A.R.S. § 13-404(A).

"A defendant is entitled to a self-defense instruction if the record contains the 'slightest evidence' that he acted in self-defense." *State v. King*, 225 Ariz. 87, 90 ¶ 14 (2010).

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