

STATE OF LOUISIANA

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NO. 2000-KA-2712

VERSUS

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COURT OF APPEAL

**TERRY WOODS, A/K/A
ALPHONSE DESMOND**

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 386-934, SECTION "L"
Honorable Terry Alarcon, Judge

JOAN BERNARD ARMSTRONG

JUDGE

(ON APPLICATIONS FOR REHEARING)

(Court composed of Judge Joan Bernard Armstrong, Judge Patricia Rivet Murray and Judge David S. Gorbaty)

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REHEARING DENIED.

The application for rehearing filed by the defendant, Terry Woods a/k/a Alphonse Desmond, concerns the assignment of error regarding his conviction for the attempted second degree murder of a reserve police officer who attempted to stop him after the murder for which he was subsequently charged (the jury could not reach a verdict on that count). In his rehearing, the defendant argues this court did not fully consider his sufficiency of evidence assignment, which was entitled in his original brief as: “The Evidence was Insufficient to Prove Specific Intent to Kill”. He now contends this court did not address what he considered to be the main thrust of his assignment, that the evidence failed to exclude a reasonable hypothesis of innocence, that he was acting in self-defense when he shot at the officer, proving he did not intend to kill him.

The defense of justification is set forth in La. R.S. 14:18, which provides in part:

The fact that an offender's conduct is justifiable, although otherwise criminal, shall constitute a defense to prosecution for any crime based on that conduct. This defense of

justification can be claimed under the following circumstances:

* * *

(7) When the offender's conduct is in defense of persons or property under any of the circumstances described in Articles 19 through 22.

La. R.S. 14:19 provides:

The use of force or violence upon the person of another is justifiable, when committed for the purpose of preventing a forcible offense against the person or a forcible offense or trespass against property in a person's lawful possession; provided that the force or violence used must be reasonable and apparently necessary to prevent such offense, and that this article shall not apply where the force or violence results in a homicide.

As noted by this court in State v. Fluker, 618 So. 2d 459, 462 (La. App. 4 Cir. 1993): "In a non-homicide situation, the defense of justification requires a dual inquiry, namely: an objective inquiry into whether the force used was reasonable under the circumstances; and, a subjective inquiry into whether the force was apparently necessary." See also State v. Freeman, 427 So. 2d 1161 (La. 1983); State v. Sparrow, 612 So. 2d 191 (La. App. 4 Cir. 1992). In Fluker, this court also held that the State has the burden of proving a lack of justification in a non-homicide case, just as it does in a homicide case. Fluker at 463. See also State v. Smith, 2000-0523 (La. App. 4 Cir. 12/20/00), 777 So. 2d 584.

Here in the record before this court, the only possible indications the defendant was presenting an argument of self-defense were a few questions to Officer Mims concerning how he was dressed at the time he confronted the defendant. Even if this can be construed as raising the issue of self-defense, Officer Mims' testimony was sufficient to disprove this defense. Officer Mims testified that as he approached the defendant when the defendant appeared to be entering a car, he identified himself as a police officer and told the defendant to drop the gun. At that point, the defendant opened fire on Officer Mims. Officer Mims stated that when he ran out of ammunition when returning the defendant's fire, he ran from the scene, and the defendant "started advancing towards me and he was still shooting." Ms. Winchester, Officer Mims' neighbor who alerted Officer Mims to the unrelated shooting, also testified that Officer Mims identified himself as a police officer when he confronted the defendant, and defendant then fired at Officer Mims. Given this testimony, the jury could easily have found the continued shooting after Officer Mims began running away negated the self-defense theory. The jury could well have believed the State disputed any implication that the defendant did not know Officer Mims was an officer and could have found the State negated any assertion, implied at best, of self-defense. As such, the evidence was sufficient to support the jury's verdict of

guilty of attempted second degree murder. This assignment has no merit.

For the forgoing reasons, the defendant's application for rehearing is denied.

REHEARING DENIED.