IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2019-KA-00366-COA

RICKY McNEER A/K/A RICKY BELVIN McNEER **APPELLANT**

v.

STATE OF MISSISSIPPI **APPELLEE**

DATE OF JUDGMENT:	01/18/2019
TRIAL JUDGE:	HON. JOSEPH H. LOPER JR.
COURT FROM WHICH APPEALED:	GRENADA COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	OFFICE OF STATE PUBLIC DEFENDER BY: MOLLIE MARIE McMILLIN
ATTORNEYS FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: MATTHEW WALTON ASHLEY SULSER
DISTRICT ATTORNEY:	DOUG EVANS
NATURE OF THE CASE:	CRIMINAL - FELONY
DISPOSITION:	REVERSED AND REMANDED - 12/08/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE BARNES, C.J., McDONALD AND LAWRENCE, JJ.

LAWRENCE, J., FOR THE COURT:

¶1. On December 13, 2017, a Grenada County grand jury indicted Ricky McNeer for the first-degree murder of Robert Little. After a jury trial, McNeer was found guilty of second-degree murder. McNeer was sentenced to serve forty years in the custody of the Mississippi Department of Corrections (MDOC). He filed a motion for judgment notwithstanding the verdict (JNOV) or, in the alternative, a new trial, which the circuit court denied. McNeer appealed. We find that the circuit court erred in refusing McNeer's proposed jury instructions regarding Mississippi Code Annotated section 97-3-15(4) (Rev. 2014).

Therefore, we reverse McNeer's conviction and remand for a new trial consistent with this opinion.

FACTS AND PROCEDURAL HISTORY

¶2. On February 22, 2017, Deputy Chris Hankins responded to a call involving a shooting at 167 Highway 7 South, Grenada County, Mississippi. When Deputy Hankins arrived on the scene, multiple individuals exited the residence with their hands up in the air. The individuals were identified as Ricky McNeer, McNeer's son Nicholas, Nicholas' fiancee, and a female juvenile. McNeer advised Deputy Hankins that his wife was still inside. While Hankins was securing custody of the four individuals outside, he was joined by Deputy Steve Howell and Deputy Eric Williamson. McNeer's wife subsequently came out of the residence willingly and joined her family, and Hankins and Howell entered the residence to secure the crime scene. When the deputies entered the home, they found Robert Little, deceased, sitting in a chair in the living room. Little was shirtless with a towel draped across his chest and dried blood around his mouth and nose. While the deputies were inside, McNeer yelled from outside the residence that the gun was in a drawer in the bedroom. In the deputies' sweep of the residence, they found the gun that McNeer identified, along with several other firearms throughout the home. Deputy Howell called for an ambulance, and the deputies waited for the arrival of the investigator and the crime-scene unit from the Mississippi Bureau of Investigation (MBI).

¶3. Investigator Greg Conley testified at trial that there was no dispute among the

witnesses interviewed that McNeer shot Little. Investigator Conley interviewed McNeer at the sheriff's department, and that interview was video recorded and played for the jury at trial. In the interview, McNeer admitted that he shot Little. It is obvious in the interview that McNeer was emotional as he recounted the morning's events. McNeer stated that a week prior to the instant altercation, he was suspicious that Little was stealing from the family. McNeer later discovered that Little had stolen a variety of items, including jewelry and hand tools. But most significant was the fact that Little had stolen one of McNeer's guns. McNeer said that all Little could talk about recently was "killing, killing, and stealing." McNeer told Investigator Conley that he had become increasingly nervous about Little's behavior on the days leading up to the shooting. On the day of the shooting McNeer and his wife had discovered that Little had stolen from them again, and they decided they were going to tell Little he could no longer stay at his residence. When McNeer was asked about Little's actions on that morning after being told to leave the McNeers' home, McNeer stated that Little looked at him with the "coldest, deadliest" stare and gave him an "I want to kill you look." McNeer said he was scared and knew that he could not fight Little as a result of a recent back injury. McNeer said that when Little "stood up with the look in his eye, he was not going to turn around and pack his bags." Finally, McNeer told Investigator Conley that "he did not want to shoot that man" but could not risk his family getting hurt.

¶4. Dywana Broughton with the MBI crime scene unit arrived on the scene with two additional crime-scene analysts. They observed the crime scene, took photographs, drew

sketches, and located and documented evidence. Broughton found Little in a slumped-sitting position in a chair in the living room. His buttocks were on the edge of the seat, his knees were bent, and his feet were planted side by side on the floor with his heels slightly back toward the chair. His right arm was over his chest on top of a towel. According to Broughton there was no blood splatter on the floor around the victim, but it "clearly should be everywhere." She testified that she observed only one small drop of blood on the floor, a splatter of blood on Little's hand, and a blood-saturated chair. She stated that, "So, typically, when we have scenes and there's some type of shooting, blood does splatter everywhere . . . . [Little] appeared to have just been there near the chair, not away from the chair when the shot occurred." Finally, Broughton testified that there was no evidence of a struggle and that while Little did not have a weapon on or around his person, she retrieved a shell casing for a nine-millimeter Luger on the couch directly across the room facing the chair where Little was found. There were no objections from defense counsel throughout Broughton's testimony.

¶5. Dr. Brent Davis, a forensic pathologist employed by the State of Mississippi, testified at trial regarding his conclusions of Little's post-mortem examination. Davis tracked the fatal bullet-wound path front to back at a downward angle from the top of Little's chest at the midline down to the middle of his back, where the bullet became lodged. On cross-examination, Davis testified that "bullets don't curve" but instead go straight through the body. He further testified on cross examination that "[i]n this case, the barrel was angled

downward"[1] and at least three feet away from Little's body. Finally, he testified that Little's blood tested positive for "methamphetamine, amphetamine, methadone and a breakdown product, a metabolite buprenorphine."

¶6. The only two defense witnesses at trial were McNeer and his son Nicholas. Each of their stories about the events leading up to the shooting were almost identical. McNeer's testimony was similar and consistent with his recorded interview with Investigator Conley. He testified that he had known Little for many years but had become re-acquainted with him in recent months. In fact, he had invited Little to move in with the McNeer family approximately four months prior to the shooting because Little had no where else to live. McNeer testified that on the morning of February 22, 2017, his wife woke him up, claiming that she had found prescription pills that belonged to various members of the McNeer family in Little's coat pocket. According to McNeer, this was the second time they had caught Little stealing from the family while allowing him to stay at their home. McNeer and his wife agreed that Little was no longer welcome in their home, and McNeer agreed to ask Little to leave when Little got out of the shower. McNeer testified that he and Little had an altercation a week prior. During that altercation Little became agitated, kicked things all over the floor, "body slammed" a duffle bag to the floor, which contained the stolen items, and spit on McNeer.

¶7. On the day of the shooting, McNeer asked Nicholas to stay behind after they met with

[1] There was no objection when that opinion was offered at trial.

Little to help pack his belongings and take him "wherever he wanted to go." Before confronting Little, McNeer retrieved a gun from the bedroom and concealed it under his leg on the couch where he was sitting when Little was shot. McNeer testified that he did not retrieve the gun with the intent to shoot Little. He stated that he retrieved the gun because of their prior altercation and because he knew that Little had taken hand-to-hand combat lessons and was capable of hurting him even without a weapon. McNeer testified that he recently had back surgery and knew that he was no match for Little if a physical altercation ensued.

¶8. After Little got out of the shower that morning, McNeer confronted him about the stolen pills. McNeer testified that Little denied that he had stolen the pills, but nevertheless Little was told he had to leave the residence. According to both McNeer and Nicholas, Little never spoke another word after denying the allegation of stealing the pills, but only stared at McNeer with an "evil" stare that scared them both. McNeer testified that he tried to get Little to get his things together and leave the home, but Little continued to just sit in the chair and stare, never making a move to start packing.

¶9. McNeer and Nicholas each testified that Little moved up to the edge of his chair while continuing to stare at McNeer. McNeer stated Little's stare became "so hard . . . the kind of hard where if you've ever had anybody look at you like they are gonna kill you or hurt you . . . . [I]t scared me." McNeer testified he then pulled out his gun and activated the laser. According to McNeer, Little placed his head into the line of the laser of the gun and without

saying a word, suddenly jumped out of the chair to approach McNeer "like almost a football tackle." Although McNeer told the investigator during his initial interview that Little did not take any steps toward him before he fired the gun, at trial, he testified that "when he come at me, you know, a step, a step and a half . . . I pulled that trigger." Both Nicholas and McNeer testified that McNeer remained in a sitting position when he shot Little, and McNeer testified that his gun was not pointed downward. According to both Nicholas and McNeer, Little, after being shot, stood straight up and fell back into the chair. Nicholas got a towel to put on Little's chest to stop the bleeding, and his fiancee immediately called 911.

¶10. The jury ultimately found McNeer guilty of second-degree murder. McNeer argues three issues on appeal, as follows: (1) The trial court erred in refusing to give two of his proposed jury instructions D-7 and D-9, (2) He was entitled to a directed verdict of not guilty under *Weathersby*, *infra*, and (3) The trial court erred in denying his motion for a new trial.

ANALYSIS

I. Refused Jury Instructions D-7 and D-9

¶11. McNeer asserts that the circuit court erred in refusing his proposed jury instructions D-7 and D-9. Those instructions would have instructed the jury that McNeer had no duty to retreat from the conflict before using deadly force pursuant to Mississippi Code Annotated section 97-3-15(4). Mississippi Code Annotated section 97-3-15(4) states:

> A person **who is not the initial aggressor** and is **not engaged in unlawful activity** shall have no duty to retreat before using deadly force under subsection (1)(e) or (f) of this section **if the person is in a place where the person has a right to be**, and no finder of fact shall be permitted to consider

the person's failure to retreat as evidence that the person's use of force was unnecessary, excessive or unreasonable.

(Emphasis added). McNeer's two proposed jury instructions, consistent with Mississippi Code Annotated section 97-3-15(4), read as follows:

D-7

The Court instructs the Jury that a person who is not the initial aggressor and is not engaged in unlawful activity shall have no duty to retreat before using deadly force in necessary self defense of one's person or upon any dwelling or in the immediate premises thereof, if the person is in a place where the person has a right to be. Further, no finder of fact shall be permitted to consider the person's failure to retreat as evidence that the person's use of force was unnecessary, excessive or unreasonable.

If you find from the evidence that Rick McNeer, was not the initial aggressor in this case and was not engaged in unlawful activity and was in a place where he had a right to be, he has no duty to retreat before using deadly force in a necessary self defense of his person or upon his dwelling, or the immediate premises thereof. Further, you shall not consider Ricky McNeer's failure to retreat as evidence that his use of force was unnecessary, excessive or unreasonable.

D-9

If you find the shooting of Robert Little by Ricky McNeer, was committed by Ricky McNeer in lawful defense of his person, where the[r]e was reasonable ground to apprehend a design to do some great personal injury, and there was imminent danger of such design being accomplished, then such shooting was justifiable.

Further, a person, in such circumstances, who is not the initial aggressor and is not engaged in unlawful activity shall have no duty to retreat before using deadly force, if the person is in a place where the person has a right to be and you shall not be permitted to consider Ricky McNeer's failure to retreat as evidence that his use of force was unnecessary, excessive or unreasonable.

¶12. "When jury instructions are challenged on appeal, we are mindful that trial courts are

given considerable discretion regarding the instructions form and substance." *Roberson v. State*, 19 So. 3d 95, 99 (¶3) (Miss. Ct. App. 2009). It is well settled that the standard of review for the giving or refusing of jury instructions is an abuse of discretion. *Taylor v. State*, 109 So. 3d 589, 595 (¶18) (Miss. Ct. App. 2013) (citing *Victory v. State*, 83 So. 3d 370, 373 (¶12) (Miss. 2012)). "When reviewing the giving or refusal of jury instructions, we do not view the jury instructions in isolation, but instead we consider them as a whole." *Id*. (citing *Rushing v. State*, 911 So. 2d 526, 537 (¶24) (Miss. 2005)).

¶13. Before refusing McNeer's two jury instructions, the following exchange occurred between the court and counsel:

ASSISTANT DISTRICT ATTORNEY:	Your Honor, I think the evidence is clear that [McNeer] is the initial aggressor in this case. He's the one that brought the gun into the situation.
THE COURT:	I agree. There's no justification for D-7. I mean, the testimony is that while Mr. Little was sitting in the chair and had not made any move at all at that point, a gun was pulled on him so that certainly makes Mr. McNeer the initial aggressor not Mr. Little, so I'll refuse D-7. . . .
DEFENSE COUNSEL:	. . . Again, it's talking about [McNeer] not being the initial aggressor in D-9.
THE COURT:	Well, I'll refuse D-9. Again, when you pull a gun on somebody that's sitting in [a] chair and hasn't made any move at all, then you are the initial

aggressor, not them.[2]

¶14. "[A] defendant is entitled to have **every** legal defense he asserts be submitted as a factual issue for determination by the jury under proper instruction of the court." *Giles v. State*, 650 So. 2d 846, 849 (Miss. 1995) (emphasis added). In essence, the jurisprudence of this State demands that a theory of defense must be adequately instructed if the evidence warrants.

¶15. In *Hester v. State*, 602 So. 2d 869, 872 (Miss. 1992), the Mississippi Supreme Court emphasized the importance of giving jury instructions on the evidence presented even if that evidence was "meager":

> In a homicide case, as in other criminal cases, the court should instruct the jury as to theories and grounds of defense, justification, or excuse supported by the evidence, and a failure to do so is error requiring reversal of a judgment or conviction. . . . **Even though based on meager evidence and highly unlikely, a defendant is entitled to have every legal defense he asserts to be submitted as a factual issue for determination by the jury under proper instruction of the court.**

Id. (emphasis added). Notably, although Hester's version of the facts differed from that of State's witnesses, the court held that he had established an "evidentiary predicate for the defenses contained in his requested but refused instructions." *Id*. at 873.

¶16. In *Thomas v. State*, 75 So. 3d 1112, 1115-16 (¶14) (Miss. Ct. App. 2011), this Court

---

[2] McNeer asserts that the circuit court erroneously relied upon the fact that McNeer pre-armed himself before his confrontation with Little, in concluding that McNeer was the initial aggressor. However, the record is clear that the circuit court summarily determined that McNeer was the initial aggressor because he pulled the gun on Little, not because he pre-armed himself.

reversed a defendant's conviction because the court refused his requested jury instruction on section 97-3-15(4). Thomas was at a fundraiser, and a fight ensued. *Thomas*, 75 So. 3d at 1113 (¶3). After Thomas shot a gun in the air, the fighting stopped. *Id*. Thomas fled to his car, and several men followed him. *Id.* at (¶4). The men tried to open Thomas' car doors and hit, kicked, and threw things at the car. *Id*. When Thomas got in his car, he rolled down his window and fired several shots, killing the victim. *Id*. Following a trial, Thomas was found guilty of manslaughter. *Id.* at (¶1).

¶17. On appeal, this Court held there was a factual basis that warranted the castle doctrine instruction. Although a question arose as to whether Thomas was the immediate aggressor since he first fired a gun in the air, this Court found that to be a factual question. Thus, that question should have been presented to a jury "as to whether or not the attack on Thomas once he entered his car started a separate chain of events." *Id*. Further, this Court held that "[w]hen serious doubt exists as to whether an instruction should be included, **the doubt should be resolved in favor of the accused**." *Id*. (emphasis added). Even though Thomas was given a self-defense instruction, this Court held that the self-defense instruction did not "adequately present his theory of defense." *Id*. 75 So. 3d at 1115-16 (¶14).

¶18. In *Newell v. State*, 49 So. 3d 66, 73 (¶19) (Miss. 2010), Newell challenged the trial court's refusal of several of his proffered jury instructions, specifically related to Mississippi Code Annotated section 97-3-15. Newell claimed that the denial of his proposed jury instructions "eviscerated his theory of self defense." *Id*. In refusing Newell's jury

instruction, which defined the statutory presumption in Mississippi Code Annotated section 97-3-15(3), the trial court stated:

> [T]his one is not supported by the facts, because the uncontradicted evidence is your client gets out of his vehicle and shoots the man outside of the vehicle. He doesn't roll the window down and shoot him through the window, he doesn't sit in his vehicle and shoot him as the man opens the door, he gets out and shoots him.

Id. at 76. The supreme court disagreed and held that the jury should have been instructed on the "Castle Doctrine" presumption. Further, the supreme court held that if the jury had been properly instructed on the presumption, it may have reached a different conclusion "regarding the reasonableness and necessity of Newell's action against the victim, which would have given more weight to Newell's self-defense claims."

¶19. Here, in accordance with Mississippi precedent, the question becomes: was there a "meager" evidentiary basis that should have been resolved in McNeer's favor warranting the giving of the proposed instructions? McNeer's son Nicholas, testified to Little's demeanor on the morning that Little was shot:

> You could see in his face just an overwhelming amount of anger. . . . Very, very scary to me. You know, even me sitting there looking at him, I could tell just in his demeanor that he had done gotten so angry and almost emotionless, you know, just – it was scary looking. . . . [H]e would never stop looking at Daddy like – **just with this evil look**. That's all I can say. **Just evil**. **And it scared me**. **It had me afraid**. **I was afraid of the way he was looking**. He never said nothing. **Never even moved but his overall demeanor just had me fearful**.

(Emphasis added). Nicholas also testified that his father, Ricky McNeer, tried to talk to Little and pled with him to leave the home for what "felt like forever." Little refused to

leave. Nicholas testified that Little "just sat up, like challenging [McNeer]" and finally "jumped up out of the chair, just made a real quick jumping motion, just like [came] forward. And the next thing I know, I hear a gunshot."

¶20. McNeer's version of the events that morning were nearly identical to that of his son. McNeer testified that Little "stared at me so hard . . . . **[I]f you've ever had anybody look at you like they're going to kill you or hurt you, you'll know what I'm talking about**. **It scared me.** It wasn't no play to it." (Emphasis added). He said that Little just "**stared at [him] like he was going to kill [him]**." (Emphasis added). He tried to rationalize with Little by telling him, "'[P]lease, Robert, let's get your stuff, I'll take you where you want to go. Let's get your stuff. You got to go'. . . . I just kept asking, 'please, man.'" After continuous pleading, Little would not speak and kept staring at him and then positioned himself on the edge of the chair. At that point, McNeer pulled his gun because he "saw it in his eyes what he was about to do." According to McNeer, Little ran his head into the laser of the gun, and the next thing he knew, Little "[came] up out of that chair, but he didn't come up to stand up and stand up like, see y'all later or help me out or nothing. He [came] up, leaned towards me . . . like **almost a football tackle**." (Emphasis added). At that point McNeer shot Little one time. McNeer testified he never wanted to hurt Little, but he shot him that day "[t]o keep from getting hurt, to keep him from hurting me, and he was fixing to hurt me. I know he was."

¶21. McNeer also testified about a prior conversation and altercation that he had had with

Little that made him afraid of Little. According to McNeer, Little was stocky, strong, very fast, and could "run like the wind." Further, he testified that Little "[s]howed me how he could twist me up in a pretzel knot. He showed me how he could hurt me quick, way quick. I wasn't even comparable to him." Finally, McNeer testified that a few weeks prior to the shooting, when he confronted Little about stealing from the family, Little spit on him, body slammed his duffel bag on the floor, and kicked items all over the floor while the kids were asleep. McNeer testified that his prior encounter with Little, as well as the immediate confrontation with Little, played a part in his ultimate decision to pull out the gun.

¶22. Given the undisputed eye-witness testimony that Little jumped up from his chair before he was shot, only two scenarios are plausible. Either Little was jumping up to leave the McNeers's home, or he was jumping up to attack McNeer.[3] It is clear that both McNeer and Nicholas believed the latter and maintained that Little was therefore the initial aggressor. To the contrary, the circuit court unilaterally determined that McNeer was the initial aggressor as a result of pulling a gun on Little and refused jury instructions D-7 and D-9, each one of which explained the castle-doctrine law of section 97-3-15(4).

¶23. There is no doubt that McNeer was in a place he had every right to be and was not engaged in criminal activity by asking Little to leave his home. McNeer and his son both

[3] McNeer testified that Little jumped out of the chair and "came forward" almost "like a football tackle. Further, in his interview with law enforcement, which the State played for the jury, McNeer stated that Little went to stand up "with the look in his eye, he was not going to turn around and pack his bags." A reasonable juror could find that this testimony showed Little was attacking McNeer rather than leaving.

testified as to Little's reaction upon being told to leave the home. McNeer, provided at the very least a "meager" evidentiary basis for the jury to factually consider who the initial aggressor was and then apply the law accordingly. *See Hester*, 602 So. 2d at 872. But the jury never got to make that factual determination and evaluate its legal significance, if any, as the court never adequately instructed it as to section 97-3-15(4) of Mississippi self-defense law.

¶24. Trial courts should be careful not to "eviscerate" a self-defense claim by failing to adequately or fully instruct the jury as to all issues of self-defense, especially where a factual issue exists. *See Newell*, 49 So. 3d at 73. Because McNeer established a "meager" evidentiary predicate for defenses contained in his requested instructions and there was a factual question as to who the initial aggressor was, we find that the circuit court abused its discretion and committed reversible error in refusing to instruct the jury on section 97-3-15(4). Therefore, we reverse McNeer's conviction and remand for a new trial consistent with this opinion.

II. *Weathersby* Rule and Directed Verdict

¶25. McNeer asserts on appeal that the circuit court erred when it failed to grant his motion for a directed verdict under the legal theory established in *Weathersby v. State*, 165 Miss. 207, 147 So. 481 (1933). Although the first issue in this case is dispositive, We address this issue in accordance with *Newell v. State*, 175 So. 3d 1260, 1268 (¶5) (Miss. 2015) (holding that "[t]he Court of Appeals should have addressed Newell's arguments regarding the

sufficiency of the evidence . . . even if it also determined that the trial court had committed an error in the exclusion of evidence").

¶26. Motions for a directed verdict and JNOV both challenge the sufficiency of evidence presented at trial and require the same standard of review for denial. *Jerningham v. State*, 910 So. 2d 748, 751 (¶6) (Miss. Ct. App. 2005). This Court reviews questions of sufficiency of evidence de novo. *Sanford v. State*, 247 So. 3d 1242, 1244 (¶10) (Miss. 2018). "This Court will reverse the denial of a directed verdict only where reasonable and fair-minded jurors could only find for the moving party." *Id*. In *Weathersby*, the Mississippi Supreme Court held:

> It has been for some time the established rule in this state that where the defendant or the defendant's witnesses are the only eyewitnesses to the homicide, their versions, if reasonable, must be accepted as true, unless substantially contradicted in material particulars by a credible witness or witnesses for the state, or by the physical facts or by the facts of common knowledge.

165 Miss. 207, 147 So. at 482.

¶27. There is little dispute that the uncontradicted testimony of the defendant concerning the demeanor of the victim and the manner of his jumping from the chair certainly could conceivably invoke the *Weathersby* rule. However, in this case, McNeer has waived any argument under *Weathersby*. Further, at trial and after the State's case, defense counsel made a motion for directed verdict stating, "Your Honor, at this time, I move for a directed verdict, the State having failed to make a prima fascia case." The motion was denied and the defense moved forward with their case. McNeer did not renew his motion for directed verdict at the

close of trial, and although he did file a post-trial motion for a JNOV, his motion made no reference to insufficiency of the evidence based on the *Weathersby* rule.

¶28. "A motion for directed verdict and JNOV must be specific. . . . Without specificity, a trial court will not err by denying the motion. *Davis v. State*, 891 So. 2d 256, 258 (¶6) (Miss. Ct. App. 2004). "Precedent mandates that this Court not entertain arguments made for the first time on appeal as the case must be decided on the facts contained in the record and not on assertions in the briefs. *Id*. (citing *Parker v. Miss. Game & Fish Comm'n*, 555 So. 2d 725, 730 (Miss. 1973)). Procedural bar notwithstanding, the State presented a prima facie case with sufficient evidence to support McNeer's conviction of second-degree murder. The jury heard testimony from the officers who responded to the home, a forensic pathologist and investigators who all corroborated the State's versions of the events. Based on that evidence, the jury could have easily determined that having a gun and pulling the gun was an imminently dangerous act and evinced a depraved heart. The reversible error in this case occurred when the trial court failed to adequately and fully instruct the jury as to self-defense. For the reasons stated above, this argument is without merit.

III. Motion for a New Trial

¶29. McNeer argues that the circuit court erred in denying his motion for a new trial. However, because we reverse McNeer's conviction on the basis of the circuit court's failure to allow his proposed jury instructions regarding section 97-3-15(4), we need not address this issue.

CONCLUSION

¶30. After review of the record, we find that the circuit court committed reversible error in denying McNeer's proposed jury instructions regarding section 97-3-15(4) rather than giving the question of fact regarding the initial aggressor to the jury for their determination. Therefore, we reverse McNeer's conviction and remand to the circuit court for a new trial consistent with this opinion.

¶31. **REVERSED AND REMANDED.**

BARNES, C.J., CARLTON, P.J., GREENLEE, WESTBROOKS, McDONALD AND McCARTY, JJ., CONCUR. WILSON, P.J., CONCURS IN PART AND IN THE RESULT WITHOUT SEPARATE WRITTEN OPINION.