IN THE SUPREME COURT OF MISSISSIPPI

NO. 2010-CT-00240-SCT

LONNIE YOUNG a/k/a XMOE DRAGON

v.

STATE OF MISSISSIPPI

ON WRIT OF CERTIORARI

DATE OF JUDGMENT:	01/13/2010
TRIAL JUDGE:	HON. ROBERT WALTER BAILEY
COURT FROM WHICH APPEALED:	WAYNE COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	PRO SE
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: LADONNA C. HOLLAND
DISTRICT ATTORNEY:	BILBO MITCHELL
NATURE OF THE CASE:	CRIMINAL - FELONY
DISPOSITION:	AFFIRMED - 10/04/2012
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

CARLSON, PRESIDING JUSTICE, FOR THE COURT:

¶1. In the summer of 2008, Lonnie Young shot and killed his wife's lover at a family reunion. Young was convicted of murder and sentenced to life in prison. We assigned Young's appeal to the Court of Appeals. Before the Court of Appeals, Young raised four issues. The Court of Appeals affirmed[1] and we granted certiorari to consider the following two issues: whether the trial court should be reversed for denying Young an opportunity to

[1] ***Young v. State***, 2011 WL 3804514 (Miss. Ct. App. Aug. 30, 2011).

impeach a witness, and/or for denying Young's imperfect-self-defense jury instruction. We agree with the Court of Appeals in finding that, although the trial court erred in denying Young the opportunity fully to impeach defense witness Shakitay Harris, this error was harmless. We find no error in the trial court's denial of Young's imperfect-self-defense jury instruction. We therefore affirm the judgments of the Court of Appeals and the Wayne County Circuit Court.

FACTS AND PROCEEDINGS IN THE TRIAL COURT

¶2. Our recitation of the facts is taken in part from the opinion of the Court of Appeals. ***Young v. State***, 2011 WL 3804514, **1-3, ¶¶1-11 (Miss. Ct. App. Aug. 30, 2011). We will add such facts as are revealed in the record as we deem necessary. During their ten years of marriage, Lonnie Young and his wife DeWanda had three children together, and DeWanda had a fourth child – Shakitay Harris – as a result of an affair with Otis Morgan. For several years, Young had been aware of the affair and that he was not Shakitay's biological father.

¶3. On the Fourth of July 2008, Young showed up at his mother-in-law's house and learned that his mother-in-law was hosting a family reunion to which he had *not* been invited. After finding out Morgan – his wife's ex-lover – *was* invited, Young decided to wait for Morgan to arrive and confront him about the affair. After waiting a few hours, Young decided to leave. But as he was leaving, he saw Morgan drive up to the house, so he parked his car, walked up the driveway, and confronted Morgan. What happened next was disputed at trial.

¶4. Witnesses for the State testified that Young walked up to Morgan and shouted, "You just going to come over here and disrespect me . . . ." Then, according to these witnesses, Young immediately shot and killed Morgan, who was unarmed. Although a gun was found lying near Morgan's dead body, these witnesses testified that Morgan was unarmed and insisted he was not reaching for the gun when Young approached. Young, on the other hand, testified that when he asked Morgan why he was disrespecting him and "screwing" his wife, Morgan turned, said "F--- you," and pulled a gun, prompting Young to shoot Morgan and flee the scene. Young testified that Morgan was the first to pull out a gun, and that he had shot Morgan in self-defense.

¶5. Shakitay told investigators that, prior to the shooting, Morgan was armed and was holding a gun, and that both Morgan and Young had shot at each other. But at trial, when called by Young's counsel to testify, Shakitay denied that Morgan was armed. Surprised by Shakitay's new version of the subject events, Young's attorney attempted to impeach her with her statements to police, but the State objected, arguing that Young's counsel was improperly impeaching his own witness.[2] After a bench conference (the substance of which is unknown to us) Young's counsel continued to ask about the police interview. Shakitay claimed she had never told investigators that Morgan was armed, testifying instead that she had told investigators only that she had seen a gun lying next to Morgan's dead body.

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[2]Under Mississippi Rule of Evidence 607, "[t]he credibility of a witness may be attacked by any party, including the party calling him." As noted in the Comment under Rule 607, the old voucher rule has been repudiated by this Court's judicial enactment of Rule 607.

¶6. Young's attorney requested that the Court allow him to impeach Shakitay by playing the videotaped interview for the jury. Over the State's hearsay objection, the trial judge allowed the jury to view the video/audiotaped statement, which includes the following exchange (as transcribed from the videotape):

> Shakitay: So I seen Lonnie [Young] coming through this way, and my daddy right here from where I was sitting. By the time I can get up and walk out the door, they were shooting. And I seen my daddy go into the, [sic] my daddy did have a gun. And when he hit the floor, I was trying to hold his blood in. And Lonnie [Young] took off running.
>
> Investigator: OK. You said that when you got outside, your dad did have a gun?
>
> Shakitay: He did have a gun.
>
> Investigator: OK. Did he have it in his hand?
>
> Shakitay: It was in his hand. 'Cause when I was walking out the door, he was, [sic] I saw the neck shot. When I was walking out of the door, the blood just started rushing from his neck.
>
> Investigator: And at that time, he did have a gun?
>
> Shakitay: He did have a gun (nodding head affirmatively).
>
> Investigator: Okay. But you don't know if he shot the gun, if he didn't?
>
> Shakitay: He couldn't have shot him.
>
> Investigator: Okay.
>
> Shakitay: 'Cause when I walked, time I walked out the door, the bullets start coming and, there it was.
>
> Investigator: Okay, so you were actually outside the door when the first shot was fired?

Shakitay: I was out -- by the time it's like, when first I seen Lonnie [Young] walking over, I said, "momma, he about to get in my daddy face." You know, like, it's the win– (gesturing) -- it's that big window, and the door's right here, and by the time I got out and turned that corner, he was shooting. I seen my daddy went out just right in to him. And Lonnie [Young] took off.

Investigator: And at that time, he did have a gun?

Shakitay: He did -- he did not shoot.

¶7. After the tape ended, the State renewed its objection, arguing that the statements made on the tape were consistent with Shakitay's current testimony that Morgan was unarmed. The trial judge agreed with the State and sustained the objection.

¶8. At the close of Young's case, the State submitted, and the trial judge granted, a self-defense instruction. In addition, Young's counsel submitted an imperfect-self-defense instruction, which the trial judge denied, stating that – while the facts in the case were sufficient to justify a self-defense instruction – the facts did not justify imperfect-self-defense.

¶9. On appeal, Young claims the circuit court erred by (1) denying his attorney's attempt to impeach a hostile witness during direct examination; (2) denying his imperfect-self-defense jury instruction; (3) denying his motion for a directed verdict and motion for judgment notwithstanding the verdict; and (4) denying his motion for a new trial. The Court of Appeals concluded that, although the trial judge had erred on the impeachment issue, the error was harmless because the jury had viewed Shakitay's videotaped statement to police. The Court of Appeals determined that the other issues lacked merit, and therefore affirmed.

We granted certiorari to consider only the impeachment and jury-instruction issues. We agree with the Court of Appeals' analysis and disposition of the other issues concerning the trial court's denial of Young's motion for a directed verdict and motion for a judgment notwithstanding the verdict, as well as the motion for a new trial. ***Young v. State***, 2011 WL 3804514, **7-8, ¶¶30-34 (Miss. Ct. App. Aug. 30, 2011). *See* ***Harness v. State***, 58 So. 3d 1, 4 (Miss. 2011) (under Mississippi Rule of Appellate Procedure 17(h), this Court may limit the question for review upon grant of certiorari).

DISCUSSION

Issue I: Opportunity for Impeachment of Shakitay Harris

¶10. Young argues that he was prejudiced by the trial court's denial of his request to impeach his own witness, Shakitay Harris, who he contends had become a hostile witness on the stand. We agree with the Court of Appeals that Shakitay qualified as a hostile witness, and that Young should have been granted the opportunity fully to impeach her. However, we find that the trial court's error was harmless.

¶11. Before trial, Shakitay told a police investigator, during a video-recorded conversation, that she had "seen Lonnie [Young] coming through this way, and my daddy was like right here from where I was sitting. By the time I can get up and walk out the door, they were shooting. And I seen my daddy go into the, [*sic*] my daddy did have a gun. And when he hit the floor, I was trying to hold his blood in. And Lonnie [Young] took off running." She then confirmed to the police investigator twice more that "her dad" had a gun. At trial, she testified that she never saw a weapon in Morgan's hand until after the shooting, and stated

that, in her statement to the police, she meant that she saw Young, not Morgan, with a weapon, and that she called both Young and Morgan "my daddy."

¶12. Young asked the trial court for permission to impeach his own witness, Shakitay, and the State objected, arguing that Shakitay already had cleared up any misunderstanding. The trial court overruled the objection and allowed Young to show to the jury Shakitay's videotaped statement, which already had been marked as "Exhibit 8" for identification purposes only. After the tape was played to the jury, the State renewed its objection, arguing that the statements on the videotape were inconsistent with Shakitay's testimony on the witness stand; the trial court sustained the objection. On cross-examination conducted by the State, Shakitay testified that Morgan did not have a weapon in his hand at the time of the shooting. Young declined to conduct any redirect examination of Shakitay.

¶13. The Court of Appeals determined that Shakitay's in-court testimony did, in fact, contradict the statements she had made to the police investigator, and we agree that the trial court erred in sustaining the State's objection at the conclusion of the jury's viewing of Shakitay's videotaped statement to the police. We also note that the testimony of an eyewitness to a shooting – and in particular, the testimony of the only eyewitness other than the defendant, who ever claimed that the victim had a weapon in his hand – is important evidence in a self-defense case. We now proceed to undertake a harmless-error analysis.

¶14. Contrary to Shakitay's explanation during her in-court testimony that she referred to both Young and Morgan as her "daddy," that in-court statement is belied by her pretrial out-of-court statement to the police. Although the trial court did not instruct the jury to disregard

the videotaped statement upon sustaining the State's objection after the videotaped statement had been shown to the jury, the trial court, prior to closing arguments, did give the familiar general instruction to the jury that it must "disregard all evidence which was excluded by the Court from consideration during the course of the trial." This Court on appeal has the right to presume that the jurors in today's case followed this instruction given by the trial court. ***Johnson v. State***, 475 So. 2d 1136, 1141 (Miss. 1985)). But our discussion, *infra*, will reveal more details about the trial judge's rulings concerning Shakitay's videotaped statement to police.

¶15. Also, as pointed out by the Court of Appeals:

> The facts are in dispute as to what occurred once Young arrived. At trial, eyewitnesses testified that Young approached Morgan as he was standing in the carport and stated, "You just going to come over here and disrespect me and f— my wife," before immediately shooting Morgan. However, Young testified that after he spoke to Morgan, Morgan turned around and said, "F— you," and pulled a gun on Young, which prompted Young to shoot Morgan in self-defense. Young was the only witness to claim that Morgan had a gun in his hand before Young shot him.
>
> The eyewitnesses who were outside in the carport or on the front porch all testified that Morgan was holding empty ice bags, had no weapon in his hands, and was not reaching for a weapon prior to being shot. However, the witnesses did say that they saw a gun lying near Morgan's body after the shooting when he fell to the ground. Some of the witnesses said that the gun fell out of Morgan's pocket as we was being turned over by family members to check his pulse. Others said that they only saw the gun after Morgan was turned over and did not know how it came to be lying next to Morgan.

Young, 2011 WL 3804514, at **1-2, ¶¶5-6. We note that some of the witnesses were uncertain as to how the gun came to be next to Morgan after he was shot.

¶16. Additionally, defense counsel cross-examined Shakitay about a statement she had given to him to show that this statement to defense counsel was consistent with Shakitay's statement to the police, thus contradicting her in-court testimony that she never saw a gun in Morgan's hand prior to or during the shooting. The following exchange between Young's counsel and Shakitay occurred during direct examination:

> Q: And at that time, I was questioning you about whether you told police if Mr. Young – I mean, Mr. Morgan, you saw him with a gun. You recall that?
>
> A: Yes, sir.
>
> Q: And at that time, did you not say that you saw your dad with a gun in his hand?
>
> A: It was after he fell. Like he was on the ground; that's when I saw the gun.
>
> Q: Okay. You did not recall telling me, when I was questioning you at that time, that the gun was in your dad's hand when you came to the door?
>
> A: No, sir. I was talking about Lonnie [Young]. I call both of them my dads.
>
> Q: Okay. Fair enough. In that questioning, that statement, you did say – you said Lonnie [Young] came up and you went and said: My daddy.
>
> A: "My daddy," that's Lonnie [Young]. I call both of them my daddy. Both of them are my dads.

Young, 2011 WL 3804514, **3-4, ¶16.

¶17. Other critical facts are revealed in the record. When the defense first proposed to show the jury Shakitay's videotaped statement to police, the State asserted that the video was inadmissible hearsay; the defense responded that the statement was going to be used for impeachment. A bench conference off the record followed. On-the-record proceedings then

continued outside the presence of the jury, with the State claiming that the proper foundation had not been laid for impeachment; the objection was overruled. The videotaped statement was then shown to the jury. During the playing of the videotape, defense counsel asked "[n]ow, at that point, were you talking about – you were talking about your daddy, Otis [Morgan]?" The State objected, stating that this was improper impeachment, and argued that the tape was "being played in front of the jury, who shouldn't hear it if it's not admissible." This objection was overruled and the Court instructed defense counsel to continue playing the tape. At the conclusion of the playing of the videotaped statement, the following exchange occurred:

> Mr. Sellers (Defense): Your Honor, that's it.
>
> The Court: All right. Ms. Harris, you can have a seat back up here.
>
> Mr. Angero (State): Your Honor, I renew my objection. None of that is inconsistent with her testimony here today.
>
> The Court: I will sustain the objection. That's not impeachment.
>
> Mr. Sellers: Your Honor, if - -
>
> The Court: That's not impeachment.
>
> Mr. Sellers: If I may, Your Honor?
>
> The Court: *It's up to the jury* to make that decision, but - - all right. So let's move on.

(Emphasis added.)

¶18. Clearly, the trial judge decided to leave to the jury the decision of how to view Shakitay's testimony. This testimony was not excluded and was not subject to the trial

judges's general instruction that the jury should disregard all evidence which was excluded by the Court from consideration during the course of the trial. The trial judge stated that "it's up to the jury to make that decision." The trial judge did not instruct the jury to disregard, in its entirety, Shakitay's videotaped statement to police.

¶19. Thus, the jury was fully informed via properly admitted evidence that Shakitay's in-court testimony was inconsistent with prior out-of-court statements to the police and to Young's counsel. The jurors were able to weigh this testimony to determine whether they believed or disbelieved Shakitay's testimony about whether Morgan had a gun at the time of the shooting. Furthermore, during closing arguments, Young's counsel argued to the jury that it was up to the jury to determine whether Shakitay was telling the truth on the stand or in her videotaped statement to the police. Unfortunately, the jury resolved this issue against Young.

¶20. In sum, even though the trial judge erred in excluding portions of Shakitay's videotaped statement to the police, we find this error to be harmless beyond a reasonable doubt. "'Where error involves the admission or exclusion of evidence, this Court will not reverse unless the error adversely affects a substantial right of a party.'" ***Hargett v. State***, 62 So. 3d 950, 953 (Miss. 2011) (quoting ***Ladnier v. State***, 878 So. 2d 926, 933 (Miss. 2004) (citations omitted)). "[I]t is clear beyond a reasonable doubt that [the error] did not contribute to the verdict." ***Kolberg v. State***, 829 So. 2d 29, 51 (Miss. 2002) (citing ***Conley v. State***, 790 So. 2d 773, 793 (Miss. 2001)).

Issue II: Imperfect-Self-Defense Jury Instruction

¶21. The imperfect-self-defense instruction was properly refused in today's case. Imperfect self-defense is a theory that can reduce intentional killings from murder to manslaughter where the killing is committed "without malice but under a bona fide (but unfounded) belief that it was necessary to prevent great bodily harm." ***Moore v. State***, 859 So. 2d 379, 383 (Miss. 2003) (quoting ***Wade v. State***, 748 So. 2d 771, 775 (Miss. 1999)). Manslaughter is the "killing of a human being, without malice, in the heat of passion, but in a cruel or unusual manner, or by the use of a dangerous weapon, without authority of law, and not in necessary self-defense . . . ." Miss. Code Ann. § 97-3-35 (Rev. 2006).

¶22. At trial, Young testified that he had armed himself in advance of confronting Morgan, and that he agreed that he had the intent of "going over, provoking a problem." According to witnesses, Young shot Morgan four times, and Morgan fell to the ground after the second shot. Young admitted that he did not shoot Morgan in the heat of passion, during an argument, or shortly after an argument had occurred. Young's own testimony was that Morgan had pulled a gun on him first; Morgan's pulling a weapon on him was the only reason Young offered for killing Morgan. Taken as true, this showed that Young faced imminent danger and that his apprehension was objectively reasonable. This evidence did justify Young's proffered self-defense jury instruction, which was properly granted. However, this evidence provides no evidentiary basis for the bona fide but unfounded belief required for an imperfect-self-defense instruction.

¶23. The trial court determined that, in order to approve the proffered jury instruction on imperfect self-defense, it would be necessary to:

> [T]otally disregard the facts that occurred up to the confrontation. Specifically, that Mr. Young laid in wait and planned, waiting on Mr. Morgan, for him to arrive at this house for him to be confronted. He armed himself with a weapon. He knew there was going to be trouble. He testified that they had not had any argument, no dispute that day or any day prior to that. It was all based on something that happened three or four years earlier. So for me to give, basically, [the imperfect-self-defense jury instruction] would be to totally disregard all of those facts.

The Court of Appeals agreed with the trial court's analysis, and held that "[b]ased on the facts and testimony in the record, there is insufficient evidence to warrant an imperfect self-defense jury instruction." ***Young***, 2011 WL 3804514, *7, ¶29. We agree, and likewise find this issue to be without merit.

CONCLUSION

¶24. For the reasons discussed, the judgments of the Court of Appeals and the Circuit Court of Wayne County are affirmed.

¶25. **THE JUDGMENTS OF THE COURT OF APPEALS AND THE CIRCUIT COURT OF WAYNE COUNTY ARE AFFIRMED. CONVICTION OF MURDER AND SENTENCE OF LIFE IMPRISONMENT IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, AFFIRMED. UPON RELEASE FROM CONFINEMENT, IF APPELLANT IS EVER RELEASED, APPELLANT SHALL PAY COURT COST IN THE AMOUNT OF $306.00 TO THE CIRCUIT CLERK OF WAYNE COUNTY, MISSISSIPPI. APPELLANT SHALL RECEIVE CREDIT FOR 559 DAYS OF JAIL TIME SERVED ON THIS CHARGE AS FOLLOWS: JULY 4, 2008, TO JANUARY 13, 2010.**

WALLER, C.J., RANDOLPH, LAMAR AND PIERCE, JJ., CONCUR. DICKINSON, P.J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY KITCHENS, CHANDLER AND KING, JJ.

DICKINSON, PRESIDING JUSTICE, DISSENTING:

¶26. Lonnie Young claims that he shot and killed Otis Morgan in self-defense. Shakitay Harris told the police that she saw Morgan with a gun in his hand at the time of the shooting. Young relied on Shakitay to support his self-defense claim. But to Young's great surprise, Shakitay lied on the witness stand, testifying that Morgan did not have a gun in his hand. This testimony directly conflicted with Shakitay's videotaped statement to police.

¶27. The trial judge initially allowed the jury to see the videotape of Shakitay's statement, but then ruled the videotape inadmissible. After the prosecutor engaged in some back-and-forth argument with the court, the trial judge cut him off, stating "it's up to the jury." But the trial judge never changed his ruling on the videotape, and he never instructed the jury that he had changed his ruling. Later, the trial judge instructed the jury to"disregard all evidence which was excluded by the Court from consideration during the course of the trial."

¶28. The majority makes two points that merit careful scrutiny. The first point, according to the majority, is that

> the trial court erred in sustaining the State's objection at the conclusion of the jury's viewing of Shakitay's videotaped statement to the police. We also note that the testimony of an eyewitness to a shooting – and in particular, the testimony of the only eyewitness other than the defendant, who ever claimed that the victim had a weapon in his hand – is important evidence in a self-defense case.

¶29. The second point is that "Young should have been granted the opportunity to fully impeach [Shakitay]. However, we find that the trial court's error was harmless."

¶30. In my view, the trial court prevented Young's counsel from engaging in on one of the most basic and fundamental rights accorded the accused in a criminal trial: the right to

confront, cross-examine, and impeach witnesses whose testimony places the accused in jeopardy of conviction of a crime.

¶31. The majority says no-harm-no-foul, surmising that the jury figured it all out anyway, and without the assistance of cross-examination by the accused's counsel. This totally disregards the realities of a trial. I cannot join this quantum departure from established precepts of justice, so I respectfully dissent.

¶32. It is also my view that Young was entitled to an imperfect-self-defense instruction. In criminal trials, defendants are entitled to jury instructions that present their theory of the case, so long as the instructions are correct and sufficient evidence supports them.[3] On appeal, we employ an abuse-of-discretion standard to review the denial of a requested instruction.[4] Young presented two theories to the jury: self-defense and imperfect self-defense.

Self-defense

¶33. Self-defense – sometimes called justifiable homicide – is a complete defense to murder.[5] A killing in self-defense is a homicide

> committed in the lawful defense of one's own person . . . where there shall be *reasonable* ground to apprehend a design to commit a felony or to do some

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[3] ***Maye v. State***, 49 So. 3d 1124, 1129 (Miss. 2010).

[4] ***Id***.

[5] Miss. Code Ann. § 97-3-15(1)(e) (Rev. 2006); ***Cook v. State***, 467 So. 2d 203, 207 (Miss. 1985).

> great personal injury, and there shall be imminent danger of such design being accomplished.[6]

¶34. To qualify as self-defense, the defendant's apprehension of danger must be *objectively* reasonable.[7]

Imperfect self-defense

¶35. Imperfect self-defense is not justifiable homicide, but is manslaughter under Mississippi law:

> The killing of a human being, without malice, in the heat of passion, but in a cruel or unusual manner, or by the use of a dangerous weapon, without authority of law, and not in necessary self-defense, shall be manslaughter.[8]

¶36. We have held that imperfect self-defense is "an intentional killing . . . if done without malice but under a bona fide (but unfounded) belief that it was necessary to prevent great bodily harm."[9]

¶37. In ***Cook v. State***, we stated that perfect self-defense is appropriate where a defendant's apprehension was "*objectively* reasonable," while imperfect self-defense is appropriate where the defendant's apprehension – although objectively unreasonable – seemed reasonable to the defendant, that is, was "only *subjectively*, in his or her own mind,

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[6]Miss. Code Ann. § 97-3-15(1)(e) (Rev. 2006).

[7]***Hart v. State***, 637 So. 2d 1329, 1339 (Miss. 1994).

[8]Miss. Code Ann. § 97-3-35 (Rev. 2006) (emphasis added).

[9]***Wade v. State***, 748 So. 2d 771, 775 (Miss. 1995) (citing ***Lanier v. State***, 684 So. 2d 93, 97 (Miss. 1996)).

reasonable."[10] Stated another way, imperfect self-defense is justified when the defendant actually thought self-defense was necessary, even though it was not.

¶38. In this case, by granting the self-defense instruction, the trial judge said, in essence, that Young might have shot Morgan in self-defense – that is, he might have had an objectively reasonable belief that shooting Morgan was necessary to prevent Morgan from shooting him – but he could not have had an unreasonable belief that Morgan was going to shoot him. The State argues that either Young shot Morgan in self-defense, or he murdered him.

¶39. It is uncontradicted that Morgan had a gun. And, although Young says Morgan pulled a gun first, other witnesses testified that Morgan did not pull the gun first. It was up to the jury to consider all the evidence and decide the facts. Had the jury been instructed on imperfect self-defense, it very well could have decided that Young unreasonably believed he was in danger and that he overreacted.

¶40. The trial judge found sufficient evidence to support self-defense. The record includes evidence that Young knew Morgan had a gun; that Young approached Morgan to tell him to stop "disrespecting" him by sleeping with his wife; and that Morgan responded, "F— you." Young testified that Morgan then went for his gun, but other witnesses dispute that. Thus, the point at which Morgan's gun appeared is disputed.

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[10] ***Cook v. State***, 467 So. 2d 203, 208 (Miss. 1985).

¶41. The Supreme Court of Wisconsin, in ***State v. Gomaz***, held that "it is inconsistent and reversible error to deny the imperfect self-defense instruction where an instruction is given as to perfect self-defense."[11] That court noted that self-defense is rooted in an examination of reasonableness; therefore, it is illogical to deny imperfect self-defense if the jury is instructed as to perfect self-defense.[12]

¶42. Although Maryland's highest court has refused to create a bright-line rule that a self-defense instruction necessarily warrants an imperfect-self-defense instruction, that court repeatedly holds:

> It is hard to imagine a situation where a defendant would be able to produce sufficient evidence to generate a jury issue as to perfect self defense but not as to imperfect self defense. It seems clear to us that if the reasonableness of a defendant's belief is at issue, as it is in self defense, *a fortiori*, the existence of that belief is also at issue. Therefore, the jury must reject the reasonableness of the defendant's belief as well as the existence of that belief to find the defendant guilty of murder.[13]

Maryland's Court of Appeals also cites Professors Wayne R. LaFave and Austin W. Scott's treatise approvingly:

> Where [the] "imperfect" right of self defense is recognized, it is generally the case that whenever the facts would entitle the defendant to an instruction on self defense regarding a murder charge, an instruction on this variety of manslaughter should also be given.[14]

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[11]***State v. Gomaz***, 414 N.W.2d 626, 630 (Wis. 1987).

[12]***Id***.

[13]***Roach v. State***, 749 A.2d 787, 433 (Md. 2000).

[14]***Id.*** at 434 n.5 (quoting 2 W. Lafave & A. Scott, *Substantive Criminal Law* § 7.11 (1986)).

¶43. While I would not go so far as the ***Gomez*** court in Wisconsin, I do agree with the ***Roach*** court in Maryland that it is difficult to imagine a fact scenario in which a defendant is entitled to a self-defense instruction but not entitled to an imperfect-self-defense instruction. And in today's case, the trial judge committed reversible error by refusing Young's imperfect-self-defense instruction. I therefore dissent.

KITCHENS, CHANDLER AND KING, JJ. JOIN THIS OPINION.