

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR10-447

DAVID HUGH JONES, JR.
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered February 9, 2011

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, FIRST
DIVISION
[No. CR2008-2603]

HONORABLE MARION A.
HUMPHREY, JUDGE

AFFIRMED

LARRY D. VAUGHT, Chief Judge

Appellant David Hugh Jones argues a single point on appeal—that the trial court erred in its denial of his motion to dismiss. Specifically, Jones claims that the trial court erred in its failure to dismiss his first-degree-murder charge because the State failed to introduce substantial evidence to negate Jones’s defense of justified use of deadly physical force. We disagree and affirm.

On May 8, 2008, Anthony Harris was shot to death by Jones. This fact is not in dispute. According to trial testimony, Harris was “kind of like a boyfriend” to Jones’s sister, Maya Harshaw. The evening prior to the shooting, Harris spent the night with Harshaw at the Plantation Inn. The following afternoon, Harshaw and Harris argued in the motel parking lot concerning a gold herringbone chain that was missing from Harshaw’s motel room. During the

initial stage of the altercation, Jones remained in his sister's motel room. Harris, who was accompanied by two friends—Jessie Anderson and Carnell Plummer—conceded that he took the necklace as collateral for twenty dollars that he believed Harshaw owed him. Harshaw, however, disputed the debt and asked for the immediate return of the necklace.

After Harris refused to return the necklace to Harshaw, Jones intervened on his sister's behalf. By all accounts, Jones left the motel room and met up with the three men on the stairs of the motel brandishing a weapon. The facts further establish that he was the first to introduce a weapon into the disagreement. Additionally, there was no evidence that either the victim or his friends possessed a weapon.

Plummer's testimonial account of events reflected that when Jones appeared on the scene and pulled a pistol, Plummer, Anderson, and Harris attempted to leave. Plummer further stated that Harris and Jones continued to argue with each other and as the four started walking downstairs to the first level, Jones challenged Harris to "say something else." When Harris did, Jones shot Harris in the chest. Plummer said he attempted to leave the area when he heard the shot, but when Harris (who was positioned in front of him) was shot a second time and collapsed, Plummer returned to the victim and held him as he died.

Jones was convicted and sentenced by a Pulaski County Circuit Court, with the circuit judge sitting as the trier of fact. After a finding that Jones was guilty of first-degree murder and being a felon in possession of a firearm, the judge imposed an aggregate sentence of forty years' imprisonment. It is from this sentence that Jones now appeals, challenging the sufficiency of the State's proof of his guilt of first-degree murder. He claims that the State's proof at trial was

insufficient to negate his allegedly justified use of deadly force.

When reviewing the sufficiency of the State's negations of a justification defense, we employ a substantial evidence standard of review. *Williams v. State*, 325 Ark. 432, 436, 930 S.W.2d 297, 299 (1996). Substantial evidence is evidence that is forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Hayden v. State*, 103 Ark. App. 32, 33, 286 S.W.3d 177, 178 (2008). When a defendant challenges the sufficiency of the evidence of his guilt, we view the evidence in the light most favorable to the State and consider only the evidence that supports the verdict. *Id.*, 286 S.W.2d at 178.

Deadly physical force is justified as self-defense only if the use of such force cannot be avoided by retreating. Ark. Code Ann. § 5-2-607 (Repl. 2006). Our supreme court has interpreted this statute to hold that a condition precedent to a plea of self-defense is an assault upon the defendant "of such a character that it is with murderous intent, or places the defendant in fear of his life, or great bodily harm." *Girtman v. State*, 285 Ark. 13, 16, 684 S.W.2d 806, 807 (1985). A critical inquiry is whether the defendant reasonably feared he was in danger of losing his life or receiving great bodily injury. *Heinze v. State*, 309 Ark. 162, 165–66, 827 S.W.2d 658, 660 (1992). The belief must be objectively reasonable and not arrived at via fault or carelessness. *Id.*, 827 S.W.2d at 660.

Here, by his own admission, Jones did not perceive an immediate threat. He testified that he felt it necessary to arm himself because he feared the victim would *return* with his friends. Additionally, prior to the killing, it was Jones who followed Harris as he was attempting to

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retreat down the stairs. Through witness testimony and the video evidence from the security camera located in the stair area, the State established the fact that Jones sought out the harm, pursued Harris, and was the only person in the altercation brandishing a weapon. Furthermore, the altercation had ended between the victim and Harshaw (she had returned to her room). The facts establish that Jones's "fear" was not immediate and, as such, Jones's firing of the gun two times into Harris's chest was not a defensive action that is allowed by law. In fact, Jones was the aggressor. As such, self-defense is not a viable justification for the killing, and the trial court's failure to dismiss the murder charge was not error.

Affirmed.

GRUBER and ABRAMSON, JJ., agree.