

Summary of SC98856, *State of Missouri v. Samuel Jerry Whitaker*

Appeal from the Iron County circuit court, Judge Kelly W. Parker

Argued and submitted September 1, 2021; opinion issued January 11, 2022

Attorneys: Whitaker was represented by James Egan of the public defender's office in Columbia, (573) 777-9977. The state was represented by Evan J. Buchheim and Julia E. Rives of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It is provided by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A defendant appeals from his judgment of conviction for voluntary manslaughter and armed criminal action after the circuit court failed to submit to the jury his requested self-defense instruction regarding arson. In a unanimous decision written by Chief Justice Paul C. Wilson, the Supreme Court of Missouri vacates the judgment and remands (sends back) the case. The circuit court erred in failing to instruct the jury as to whether the defendant was entitled to use self-defense to prevent arson because there was substantial evidence of the imminent threat that the defendant's son-in-law was going to burn down a trailer on the defendant's property.

Facts: Samuel Whitaker owned real property containing three trailer homes – one in which he resided and another in which his stepdaughter and her then-husband, Carl Streeval, lived. In 2012, Whitaker entered into a contract to sell the trailer to his stepdaughter and Streeval. A year later, they stopped paying Whitaker on the contract, and Streeval moved out after the stepdaughter obtained an order of protection against him. In 2013, Streeval returned to the trailer, and an altercation ensued in which Streeval threatened arson. Law enforcement instructed Streeval to leave the property, but he later reclaimed possession of the trailer upon claiming ownership to law enforcement and showing them the trailer's title. Whitaker claimed the title was stolen but was unsuccessful in getting law enforcement to remove Streeval from the property. One day, Whitaker heard Streeval outside waving a gas jug and yelling that Whitaker had until dark to get off the property. When Whitaker went outside to feed his dog, he took his gun. Streeval ran toward Whitaker, attempting to take the gun. Whitaker shot Streeval in the head. Streeval retreated with the gas jug into the trailer. Whitaker followed and picked up the gas jug Streeval left outside the bathroom. He told Streeval he was taking the gas jug. Streeval burst through the bathroom door, which landed on Whitaker, causing him to drop the jug. Whitaker then fatally shot Streeval. Whitaker was charged with first-degree murder, burglary and armed criminal action. He asserted he was defending himself against arson and requested an instruction that the arson was a forcible felony warranting his use of self-defense. The circuit court rejected the instruction, giving a self-defense instruction regarding only burglary. The jury found Whitaker not guilty of burglary but guilty of voluntary manslaughter and armed criminal action. Whitaker appeals.

VACATED AND REMANDED.

Court en banc holds: The circuit court erred by failing to give the jury Whitaker's proffered self-defense instruction regarding arson. The circuit court was required to give Whitaker's

requested instruction because there was substantial evidence to support it. There was evidence Whitaker: was not the initial aggressor; reasonably believed physical force was necessary to defend himself from what he reasonably believed to be Streeval's imminent use of unlawful force; reasonably believed deadly force was necessary to protect himself against arson; and did not have a duty to retreat. The initial aggressor was Streeval, not Whitaker. Streeval repeatedly threatened Whitaker with arson, and Whitaker reasonably believed Streeval would act on these threats. When Streeval entered the trailer carrying the gas jug, there was substantial evidence he did so with the intent to commit arson immediately. Even if the jury was not sure whether Streeval's entry was unlawful, substantial evidence remained that Whitaker reasonably believed Streeval was about to set the trailer on fire. As a result, Whitaker reasonably believed deadly force was necessary to protect himself from burglary or arson or both. Finally, Whitaker did not have a duty to retreat from his own property or from a dwelling he had not unlawfully entered or in which he was not unlawfully remaining. Because ownership of the trailer was disputed, the circuit court's failure to give the instruction was prejudicial; while the jury might not have believed Whitaker was justified to use deadly force on the basis of burglary, it may have believed he was entitled to use deadly force to stop Streeval's imminent commission of arson.