

Summary of SC94313, *State of Missouri v. Elvis Smith*

Appeal from the St. Louis circuit court, Judge Julian L. Bush
Argued and submitted January 14, 2015; opinion issued March 10, 2015

Attorneys: Smith was represented by Gwenda R. Robinson of the public defender's office in St. Louis, (314) 340-7662; and the state was represented by Gregory L. Barnes of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the 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: After a jury found a man guilty for murder and assault arising from one shooting incident, the trial court acquitted him of assault, finding double jeopardy prevented the man from being convicted of both charges, and sentenced him to prison. Both the man and the state appeal. In a unanimous decision written by Judge Zel M. Fischer, the Supreme Court of Missouri reverses the trial court's judgment acquitting the man of the charges related to assault, holding that it does not violate double jeopardy for a defendant to be convicted of crimes against different victims resulting from the same conduct. The Court remands (sends back) the case for sentencing on the jury's verdicts for these charges. The Court affirms the man's convictions related to murder, as the record did not support the submission of a self-defense instruction.

Facts: In February 2011, Elvis Smith encountered Martez Williams, who had refused to pay Smith for a drug sale the previous day. Smith asked if Williams had the money he owed Smith; Williams asked if Smith wanted to fight; and Smith pulled out a gun and fired it several times as Williams ran away in a zigzag pattern before hiding between two dumpsters. One of the bullets struck a child playing on a nearby playground; she died a few weeks later. Smith ultimately was tried before a jury for one count of first-degree murder for killing the child while shooting at Williams and a related count of armed criminal action as well as one count of first-degree assault for shooting at Williams and a related count of armed criminal action. Following the close of evidence, Smith moved for a judgment of acquittal on either the murder charges or the assault charges, arguing convictions for both would violate double jeopardy. The trial court overruled his motion and also disallowed Smith's proffered a self-defense instruction for murder. The jury found Smith guilty of all four charges, and he moved for judgment of acquittal notwithstanding the verdict, arguing that the convictions related to murder and the convictions related to assault violated double jeopardy and section 556.041.1(1), RSMo. The court granted his motion in part, acquitting him of the convictions related to assault. The court sentenced Smith to life in prison for murder and 30 years for the related armed criminal action. Both Smith and the state appeal.

AFFIRMED IN PART, REVERSED IN PART; REMANDED.

Court en banc holds: (1) The trial court did not err in refusing to submit the self-defense instruction to the jury. Smith does not dispute he used deadly force in shooting at Williams, and the record does not establish that Smith reasonably believed it was necessary to use deadly force. Williams did not hit or exhibit a weapon to Smith, and it was not until Williams stopped between the dumpsters that Smith said he believed Williams was looking for a gun. Accordingly, Smith

was not faced with a real or apparently real necessity to use deadly force to defend himself against Williams when he fired his first gunshot before Williams ran away.

(2) The trial court must correct the clerical error in its written judgment that Smith pleaded guilty to the charges related to murder when, in fact, his convictions resulted from a jury trial.

(3) The trial court erred in finding the murder and assault convictions violated double jeopardy and acquitting Smith of assault. The double jeopardy clauses of the state and federal constitutions prohibit multiple punishments for the same offense, but when the same conduct results in harm to more than one victim, double jeopardy is not violated if the defendant is convicted for the harm to each victim. Although Smith's conduct in shooting at Williams resulted in both the assault on Williams and the death of the child, the state was required to prove each separately – that Smith assaulted Williams, and that Smith killed the child. As such, he can be held accountable for both crimes. The cause is remanded for sentencing on the jury's verdicts for the charges related to assault.