

## *State v. Carson*

**Citation:** 410 P.3d 1230 (Ariz. 2018).

**Date Filed:** February 27, 2018

**Author:** Justice Timmer

**Joined by:** Chief Justice Bales, Vice Chief Justice Pelander, and Justices Brutinel, Bolick, Gould, and Lopez

**Facts:** One night in October 2013, Carson and victims S.B., J.M., and B.C. attended a house party in Tucson. There was “bad blood” between Carson and J.M., and the two men engaged in a prolonged fight inside the house. The fight involved many people, including S.B., and lasted five to ten minutes before it was broken up. At some point during this confrontation, Carson displayed a gun.

Shortly thereafter, the fight resumed outside in conditions that witnesses described as chaotic. Several people, including J.M. and S.B., “jumped” Carson and hit and kicked him while he was on the ground. One witness stated Carson pulled out a gun and swung it towards J.M. and S.B., who responded by fighting him. Someone yelled, “he has a gun,” and people ran. Shots were fired. J.M. and S.B. were shot and killed, and B.C. was shot but survived. The gun was never found. A bloody knife was found on the ground near S.B.’s body at the end of a trail of blood drops, and a second bloody knife was found tucked inside his belt. Neither was tested for fingerprints or DNA.

Carson fled and was later arrested in Michigan. The State charged him with two counts of second degree murder and two counts of aggravated assault.

**Procedural history:** The case is currently before the Arizona Supreme Court. During the jury trial, Carson’s principle defense was misidentification, i.e. that he was not the shooter, but he also requested a self-defense instruction. The trial court denied his request, concluding that “‘the court legally [could not] give a self-defense instruction’ because Carson denied he had shot the victims.”<sup>1</sup> The jury found Carson guilty on all counts, and the trial court sentenced him. Carson appealed, and the court of appeals reversed the murder convictions and sentences and remanded for a new trial, finding the trial court erroneously refused the self-defense instruction as to those two victims. However, it affirmed the aggravated assault convictions, reasoning there was insufficient evidence to support a self-defense instruction regarding Carson shooting B.C. The Supreme Court granted review of Carson’s petition and the State’s cross-petition.

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<sup>1</sup> State v. Carson, 410 P.3d 1230, 1232 (Ariz. 2018).

**Issues:**

1. Can a defendant be entitled to a self-defense jury instruction if he also asserts a misidentification defense?
2. If a defendant can simultaneously assert misidentification and self-defense, then was Carson entitled to a self-defense jury instruction as to the aggravated assault charge when the victims jumped him after he displayed a gun, kicked and punched him while he was on the ground, and circumstantial evidence supports finding one victim used one or two knives to stab at least one person during the fight?

**Holdings:**

1. Yes, a defendant can be entitled to a self-defense jury instruction even if he also asserts a misidentification defense.
2. Yes, Carson is entitled to a self-defense jury instruction.

**Disposition:** The court vacated the court of appeals' opinion, reversed Carson's convictions and sentences, and remanded the case for a new trial.

**Rules:**

1. If the slightest evidence supports a finding of self-defense, the prosecution must prove its absence and the trial court must give a requested self-defense jury instruction, even if the defendant also asserts a misidentification defense.
2. The facts that the victims jumped Carson after he displayed a gun, kicked and punched him while he was on the ground, and circumstantial evidence supported finding one victim used one or two knives to stab at least one person constitute the slightest evidence of self-defense.

**Reasoning:**

- **Simultaneously Asserting Misidentification and Self-defense**

1. **Self-defense:** The court began its discussion with an overview of statutory and case law regarding self-defense.<sup>2</sup> A person is justified in using physical force against another, and does not commit a crime, "when and to the extent a reasonable person would believe that physical force is immediately necessary to protect himself against the other's use or attempted use of unlawful physical force."<sup>3</sup> Also, deadly force is justified if § 13-404 is satisfied and "a reasonable person would believe that deadly force is immediately necessary to protect himself against the other's use or attempted use of unlawful deadly physical force."<sup>4</sup> Objective standards that depend on the beliefs of a "reasonable

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.* (quoting ARIZ. REV. STAT. ANN. §§ 13-205(A), 13-404(A) (2017)).

<sup>4</sup> *Id.* (quoting ARIZ. REV. STAT. ANN. § 13-405(A) (2017)).

person” in the defendant’s circumstances control these provisions, not the defendant’s subjective beliefs.<sup>5</sup> If the record contains the “slightest evidence” that the defendant acted in self-defense, then he is entitled to a self-defense instruction.<sup>6</sup>

**2. Prior Holdings:** For years, Arizona courts did not allow a defendant to deny physically injuring a victim and simultaneously claim self-defense.<sup>7</sup> The court explained that continuing to adhere to the *Plew* line of cases would contradict the legislature’s intent about what constitutes criminal conduct. In 2006, the legislature declared that “actions taken in self-defense transform conduct that would otherwise be criminal into legally permissible conduct.”<sup>8</sup> Once a defendant presents evidence of self-defense, “the state must prove beyond a reasonable doubt that the defendant did not act with justification.”<sup>9</sup> The absence of self-defense becomes an additional element the state must prove to convict the defendant. The court explained that “[p]recluding a defendant who claims misidentification from also asserting self-defense when even the slightest evidence supports his assertion would change the state’s burden, thereby contravening the legislature’s intent about what conduct is criminal.”<sup>10</sup> Furthermore, requiring a defendant to admit to being the perpetrator, or at least not deny it, and thus to shift the burden to the prosecution to disprove self-defense would require the defendant to effectively waive his right to hold the prosecution to its proof of all elements of the crime.<sup>11</sup>

**3. Potential Jury Confusion:** The State argued that simultaneously permitting misidentification and justification defenses would confuse the jury and undermine its truth-finding function. The court was not persuaded by this argument because juries are capable of sifting through incompatible testimonies to discover the truth, so they are also capable of sifting through conflicting defenses to discover the truth.<sup>12</sup> Moreover, the State conceded that a defendant may assert self-defense while simultaneously arguing that the prosecution failed to prove he was the perpetrator. The court reasoned that “[i]f juries are not confused in that circumstance, we do not see why they

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<sup>5</sup> *Id.* (citing *State v. King*, 235 P.3d 240, 243 (Ariz. 2010)).

<sup>6</sup> *Id.* (citing *King*, 235 P.3d at 243).

<sup>7</sup> *Id.*; *see, e.g.*, *State v. Plew*, 722 P.2d 243, 246 (Ariz. 1986) (“A defendant who denies shooting the victim may not thereafter claim self-defense.”).

<sup>8</sup> *Id.* at 1233 (citing ARIZ. REV. STAT. ANN. §§ 13-205(A), 13-103(B) (2017)).

<sup>9</sup> *Id.* (quoting § 13-205(A)).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* (citing *United States v. Demma*, 523 F.2d 981, 986 (9th Cir. 1975)).

<sup>12</sup> *Id.* (citing *State v. Wall*, 126 P.3d 148, 153 (Ariz. 2006) (finding sufficient evidence for a lesser-included offense instruction where the “facts were such that the jury could reasonably believe portions of the [witness’s] story and portion of the defendant’s story)).

would be when a defendant affirmatively asserts a misidentification defense.”<sup>13</sup> The court also found other jurisdictions permit inconsistent defenses and they have not reported turmoil from doing so.<sup>14</sup>

**4. Comparison to the Entrapment Defense.** The State also argued that self-defense should be treated like the entrapment affirmative defense, which precludes the simultaneous assertion of a misidentification defense. The court rejected this argument, explaining that the legislature has not codified the holdings in *Plew* and like cases, as it did with the entrapment defense, and the court is therefore free to re-examine the issue.<sup>15</sup>

- **Need for Self-defense Jury Instruction Here**

- 1. Evidence Supporting a Finding that Carson Acted in Self-defense:**

- a. He showed a gun inside the house, but J.M., S.B., and others nonetheless jumped him outside the house and punched and kicked him while he was on the ground;
- b. Circumstantial evidence supports finding S.B. used one or two knives to stab at least one person during the fight; and
- c. B.C. claims he was only in the scrum surrounding Carson as he was punched and kicked to pull S.B. from the fight. A reasonable person in Carson’s position, however, may not have accurately perceived B.C.’s intent and thought B.C. was one of his assailants, and a jury could have disbelieved B.C. about his intent.<sup>16</sup>

**2. “Slightest Evidence” Standard:** The court explained that the “‘slightest evidence’ standards presents a low threshold[; t]o cross it, the defendant need only show some evidence of ‘a hostile demonstration, which may be reasonably regarded as placing the accused apparently in imminent danger of losing her life or sustaining great bodily harm.’”<sup>17</sup> If the defendant presents evidence that he acted in response to a “hostile demonstration,” then he is entitled to a self-defense jury instruction.<sup>18</sup>

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<sup>13</sup> *Id.* at 1233–34.

<sup>14</sup> *Id.* at 1234; *see, e.g., Demma*, 523 F.2d at 985; *State v. McPhaul*, 851 P.2d 860, 861 (Ariz. Ct. App. 1992).

<sup>15</sup> *Carson*, 410 P.3d at 1234.

<sup>16</sup> *Id.* at 1234–35.

<sup>17</sup> *Id.* at 1234 (quoting *State v. King*, 235 P.3d 240, 243 (Ariz. 2010)).

<sup>18</sup> *Id.*