

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2024-KA-01322-COA

TYRUS TILLMAN

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF JUDGMENT:	10/26/2024
TRIAL JUDGE:	HON. MARK SHELDON DUNCAN
COURT FROM WHICH APPEALED:	SCOTT COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	OFFICE OF STATE PUBLIC DEFENDER BY: HUNTER NOLAN AIKENS
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: ALLISON ELIZABETH HORNE
DISTRICT ATTORNEY:	STEVEN SIMEON KILGORE
NATURE OF THE CASE:	CRIMINAL - FELONY
DISPOSITION:	REVERSED AND REMANDED - 10/20/2026
MOTION FOR REHEARING FILED:	

BEFORE BARNES, C.J., McDONALD AND WEDDLE, JJ.

BARNES, C.J., FOR THE COURT:

¶1. A Scott County jury convicted Tyrus Tillman as charged for the first-degree murder of Travis Jones. The jury declined to sentence Tillman to life imprisonment; therefore, the trial court sentenced him to serve forty years in the custody of the Mississippi Department of Corrections. Tillman now appeals his conviction and sentence, raising two issues: (1) the trial court erred in refusing jury instructions on imperfect self-defense manslaughter and culpable negligence manslaughter, and (2) the trial court erred in denying Tillman’s motion to suppress his statements to law enforcement. Finding error with the trial court’s refusal of the jury instruction on imperfect self-defense manslaughter, we reverse Tillman’s

conviction and sentence and remand this case for a new trial. With respect to the jury instruction on culpable negligence manslaughter, we find the trial court's refusal proper. We also find no error with the trial court's denial of Tillman's motion to suppress his statements to law enforcement.

FACTS

¶2. On the afternoon of October 13, 2022, Travis Jones and his younger brothers, Jaclarence, LeBron, and Michael Jones, were at their home on Johnson Town Road in Lake, Mississippi. Travis was approximately sixteen years old. Their cousin Daylan Chapman had come over to play video games. On the way, Chapman had seen Tillman, who was also sixteen years old, in the front yard of a nearby gray house down the street, dancing with a small gun in his hand. Chapman drove past Tillman without stopping to speak. A few moments later, Davion Thames, another friend of the Jones brothers, also arrived at the Joneses' house. Everyone was playing video games but Travis, who was in a separate room by himself.

¶3. Earlier that day, Thames had been sending threatening messages to Tillman. One of the messages stated: "Fixing to get this circle set up for you all boys." The police investigation later discovered there was animosity between Tillman's friends and Travis because Travis was dating the sister of one of Tillman's friends. There was also an issue about a rap video or song made of Travis's girlfriend. Tillman, however, denied having a problem with Travis.

¶4. Shortly after Thames arrived at the Joneses' house, everyone decided to go to

Walmart. They left in three separate vehicles, closely following one another, headed south on Johnson Town Road. Thames led in his white Chevy truck, carrying Travis's three younger brothers—Jaclarence, LeBron, and Michael. Next was Chapman, alone in his Impala. Last was Travis, alone in his truck. They drove slowly past the gray house, where Tillman was still standing outside.

¶5. Chapman testified that when he passed the gray house, Tillman was alone, but with no gun in his hand this time. Chapman did not slow down or speak to Tillman. After passing the house, Chapman heard gunshots but could not tell what was happening behind him. Chapman testified that no bullets hit his vehicle, and he did not think any bullets hit Thames's vehicle. Chapman was unsure if any shots were fired at his vehicle. He denied shooting at Tillman and did not see any guns firing from Thames's vehicle in front of him. Chapman testified that neither he nor any of the other individuals driving past the gray house had guns. Chapman was not aware of a plan to do anything to Tillman. On cross-examination, the defense entered a photograph taken from social media of Travis, Travis's brothers, Chapman, and other young men flashing gang signs. The exact date of the photograph was unknown. Chapman admitted to knowing about the local "Johnson Town Gang," or "JTG," but denied knowing whether the Jones brothers were in it at the time of the shooting.

¶6. Travis's younger brother Michael, who was thirteen years old at the time of the shooting, testified that when he rode by the gray house, several people were standing outside, and three individuals had "guns up in the air." It looked like they were firing them.

One individual was Tillman, who was standing on the edge of the road. After passing the house, Michael testified that he heard gunshots and looked back to see that Travis's truck had run off the road. Michael testified that nobody in his vehicle fired or flashed a weapon as they drove past the gray house, nor did they stop to talk to the individuals standing outside. Michael denied having a gun, and to his knowledge, neither Travis nor Chapman had one. Michael testified that Thames had a pistol in his glove compartment, but it was not used in the shooting. Michael denied that he or his brothers were in the JTG, but he thought Tillman was a member.

¶7. One of the first officers to arrive at the scene was Scott County Sheriff Mike Lee. Approximately twenty to thirty people were gathered in different areas. Sheriff Lee saw Travis's wrecked truck in a wooded area along Johnson Town Road. Travis was still in the driver's seat with a gunshot wound to the back of his head. The back glass of the truck was shot out. Travis was pronounced dead at the scene.

¶8. Dr. Frank Peretti, who performed Travis's autopsy, testified that he recovered "a large caliber jacketed bullet" from Travis's brain. He testified that a large caliber bullet has a diameter of 0.4 inches or larger. A .45-caliber bullet is considered a large-caliber bullet, whereas a nine-millimeter bullet is classified as a medium-caliber bullet.

¶9. Other officers who arrived at the scene were Investigators Billy Patrick, Donald Simpson, and Michael McCarty. In addition, Major Willie Anderson went to the hospital to check on a thirteen-year-old victim who was shot in the leg by a stray bullet while at a nearby trailer. After thirty minutes, Major Anderson went to the scene. He observed a bullet

hole on the lower driver's side door of Travis's truck and another on the tailgate. The rear window of the truck was missing, and both front and rear driver's side headrests had bullet holes in them. Major Anderson testified that the bullet hole on the driver's side door looked like a bullet was shot relatively straight into the side of the truck.

¶10. In the front yard of the gray house, officers found a total of seventy-four shell casings in three separate clusters—two clusters of nine-millimeter shells and one cluster of .45-caliber casings. The nine-millimeter clusters were closer to the road; the .45-caliber cluster was closer to the gray house near a magnolia tree, which was also struck by bullets. Travis's truck was located on the other side of the magnolia tree, where the cluster of .45-caliber casings was found. Officers found four or five AK-47 rifle casings further south on Johnson Town Road, but officers could not determine their source.

¶11. Witnesses gave officers conflicting reports of what happened. Some witnesses told officers that two other individuals, Dashiel Ernest and Zykevious Johnson, were shooting on their end of the road. Other witnesses told officers that Travis's brothers were firing shots; however, no physical evidence, such as shell casings or projectiles, was found indicating that the individuals in the three vehicles had fired in the direction of the gray house.

¶12. On October 17, 2022, four days after the shooting, Tillman was arrested and gave the first of three statements to law enforcement.¹ Major Anderson and Investigator Patrick read

¹ At trial, defense counsel objected to Major Anderson's testimony about Tillman's statements. Tillman had also filed a pre-trial pro se motion to suppress his statements. The trial court held a suppression hearing where Major Anderson, Investigator Patrick, and Tillman testified. The trial court denied Tillman's motion.

Tillman his *Miranda*² rights, which he waived. Major Anderson testified that, initially, Tillman denied being present at the shooting. However, Tillman ultimately confessed to his presence and that he was shooting a nine-millimeter gun at the location of the shell casings. After an interview lasting approximately two hours, Investigator Patrick reduced Tillman's statement to writing, which Tillman signed. His first statement was entered into evidence and read:

I was at Mark Wilson's old house on Johnson Town Road. I was with Joshua Nicks and a guy I only know as Backend [Cenarius Morgan].^[3] We all had guns. *I received a phone call on Instagram on Joshua's phone saying they was going to kill me. It was Davion [Thames] and Jock [Jacquez Evans⁴]. A few minutes later, they come driving through. [Thames] was driving a white truck and an Impala [Chapman] was behind [Thames]. There was another truck that was following [Thames] and the Impala. We thought [Thames] and the Impala [Chapman] was about to start shooting at me. So I pointed my 9mm pistol and started shooting. Joshua starts shooting as well. And the guy I knew as Backend, he started shooting as well. We didn't mean to shoot the last vehicle. It was kind of coming into the shooting that was going on. After we stopped shooting, we could still hear some gunshots going on at the end of the road. Me and Josh got into the vehicle with Backend and left. He took me to the Brusher community where he dropped me off. I stayed in Brusher by myself while Josh and Backend left. As we was leaving from Johnson Town Road, we could still hear a lot of shooting going on at the end of the road. I took my 9mm pistol and gave it to Octavious Polk to keep for me. Later the same day, I talked to Dashiel Ernest, and he told me that he didn't know that we were shooting down at Mark's house. And I told Dashiel that we didn't know that they were shooting on that end of the road. I know that it was Dashiel and Zykevious Johnson shooting on their end because Dashiel*

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

³ Nicks and Morgan were co-indicted with Tillman for first-degree murder. Nicks and Morgan are currently serving sentences for manslaughter.

⁴ Jock was interviewed for the investigation. Law enforcement could not establish that Jock was ever at the scene but verified he was in Newton County. He was a relative of Travis.

told me so. Zykevious shot twice and his gun hung up, and he took off running. They were shooting at [Thames]'s truck. I also talked to Jordan Pace that day, and he tells me he was shooting as well.

(Emphasis added). Major Anderson testified that Tillman admitted no one in the three vehicles fired a weapon, brandished a weapon, or made “any threats whatsoever[;] . . . [t]hey just started shooting” as the vehicles passed the gray house. Tillman told Major Anderson there was “beef” with Thames, who was in the lead vehicle, but not with Travis, who was driving the last vehicle. Major Anderson testified that Thames was not injured, but Travis, an “innocent bystander,” was killed.

¶13. Major Anderson and Investigator Patrick conducted two more follow-up interviews with Tillman—on October 19 and October 31, 2022—to determine who fired what weapon. For both interviews, Tillman again waived his *Miranda* rights. The October 19 interview was verbal only, but Major Anderson testified that he took notes during the interviews, which were later transferred to a supplemental report and admitted for identification purposes only.

¶14. During Tillman’s third statement on October 31, 2022, Tillman himself wrote the following statement, which was entered into evidence:

They met up down the street from my house at his house then [Thames] text me saying they finna spin in[.] Jock said he was finna kill me so when I see him he told me I better shoot my gun. They came through, I shot[,] my brudda shot Backend shot[,] then more shooting went on[,] then Lil Tim started shooting.

Cenarious Morgan aka Backend [was] shooting a 45 glock. Lil Tim aka Shooter [was shooting] a glock 9. Jock was shooting a 9. I was shooting a 9 Sar that Gray sold to me [for] 300 dollars. I stay with Jordan Pace.

¶15. Major Anderson testified that Tillman assisted law enforcement in recovering the nine-millimeter Sar pistol he used. Major Anderson agreed with the prosecutor that “it sounds like from the statements, Mr. Tillman is basically saying he was shooting in self-defense or in fear” of Thames and Jock. However, Major Anderson also agreed that the evidence in the investigation did not support Tillman’s claim of acting in self-defense because “[n]one of the drivers or occupants in the three vehicles produced any weapons whatsoever.”

ANALYSIS

I. Jury Instructions

¶16. Tillman requested two lesser-included-offense jury instructions on manslaughter—imperfect self-defense and culpable negligence—both of which the trial court denied. We find the trial court’s refusal to give the imperfect self-defense manslaughter jury instruction was in error, and we accordingly reverse on this ground.

¶17. The standard of review for the trial court’s denial of a request for a lesser-included-offense jury instruction is de novo, “as this is a question of law.” *Downs v. State*, 962 So. 2d 1255, 1258 (¶10) (Miss. 2007). “To warrant the lesser-included offense instruction, a defendant must point to some evidence in the record from which a jury could reasonably find him not guilty of the crime with which he was charged and at the same time find him guilty of a lesser-included offense.” *Buchanan v. State*, 84 So. 3d 812, 815 (¶8) (Miss. Ct. App. 2011) (quoting *Goodnite v. State*, 799 So. 2d 64, 69 (¶24) (Miss. 2001)). The evidence will be considered “in the light most favorable to the party requesting the instruction. That

party must also be given the benefit of all favorable inferences that may reasonably be drawn from the evidence.” *Id.* (quoting *Booze v. State*, 964 So. 2d 1218, 1221 (¶14) (Miss. 2007)). “A lesser-included offense instruction must be granted where a reasonable juror could not on the evidence exclude the lesser-included offense beyond a reasonable doubt.” *Id.* (quoting *Jones v. State*, 798 So. 2d 1241, 1253 (¶38) (Miss. 2001)). Another factor considered “is the disparity in maximum punishments between the offenses. A great disparity is a factor in favor of giving the lesser included offense instruction.” *Id.* The Mississippi Supreme Court has directed that “in homicide cases, the trial court should instruct the jury about a defendant’s theories of defense, justification, or excuse that are supported by the evidence, no matter how meager or unlikely, and the trial court’s failure to do so is error requiring reversal of a judgment of conviction.” *Manuel v. State*, 667 So. 2d 590, 593 (Miss. 1995) (citing *Hester v. State*, 602 So. 2d 869, 872 (Miss. 1992)). Although “[a] defendant is entitled to have jury instructions given which present his theory of the case, . . . this entitlement is limited in that the court may refuse an instruction which incorrectly states the law, or is without foundation in the evidence.” *Chinn v. State*, 958 So. 2d 1223, 1225 (¶12) (Miss. 2007) (quoting *Howell v. State*, 860 So. 2d 704, 745 (¶142) (Miss. 2003)).

A. Imperfect Self-Defense Manslaughter Instruction

¶18. Imperfect self-defense derives from Mississippi Code Annotated section 97-3-35 (Rev. 2020), which defines manslaughter as “[t]he 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” *Crump v. State*, 237 So. 3d 808, 819 (¶36) (Miss. Ct. App. 2017) (citing *Cook v. State*, 467 So. 2d 203, 207 (Miss. 1985)). “Unlike true self-defense, imperfect self-defense is not a defense to a criminal act.” *Ronk v. State*, 172 So. 3d 1112, 1126 (¶22) (Miss. 2015). “Rather, under the theory of imperfect self-defense, ‘an intentional killing may be considered manslaughter if done without malice but under a bona fide (but unfounded) belief that it was necessary to prevent death or great bodily harm.’” *Id.* (quoting *Wade v. State*, 748 So. 2d 771, 775 (¶12) (Miss. 1999)). “In other words, there must be evidence that the defendant ‘*subjectively*’ believed ‘in his . . . own mind’ that [he] was in imminent danger of death or great bodily harm.” *Cruz v. State*, 305 So. 3d 149, 156 (¶18) (Miss. Ct. App. 2020) (quoting *Brown v. State*, 222 So. 3d 307 (¶21) (Miss. 2017)).

¶19. Tillman’s proposed lesser-included-offense jury instruction (D-12) read:

If the defendant killed another person with an actual, genuine belief that firing the weapon was necessary in order to protect himself from great bodily harm or death, even though that belief was not reasonable under the circumstances, then the defendant did not have the mental requirement to commit murder. However, the killing may be manslaughter. If you find from the evidence in this case that:

1. On or about October 13, 2022, in Scott County;
2. Tyrus Tillman fired his weapon at the vehicles, acting with genuine belief that the killing was necessary in order to protect Tyrus Tillman from great bodily harm or death; but
3. That belief was not reasonable under the circumstances, then you may find Tyrus Tillman guilty of the lesser-included offense of manslaughter.

¶20. The trial court refused the instruction, stating “the only possible threat” to Tillman

was the “vague message” from Thames that day, at an unknown time, threatening Tillman. The trial court found the message was not “an imminent threat . . . to do physical, bodily harm to him or cause his death.” The trial court also pointed to Tillman’s statement that no one in the vehicles shot at them, and no weapons were displayed—the vehicles were just passing by the house where Tillman was standing.

¶21. Tillman claims the evidence, viewed in the light most favorable to him, supports giving the requested instruction. We agree. Tillman’s first statement to law enforcement on October 17 provided evidence that Tillman and Nicks received an Instagram message on Nicks’s phone that Thames and Jock were going to kill Tillman. “A few minutes later,” the vehicles went by the house. Tillman believed Thames and Chapman were “about to start shooting at me”; so he and Nicks started shooting. Additionally, Major Anderson agreed that Tillman indicated he shot at the vehicles out of fear or self-defense of Thames and Jock. In the course of the investigation, Major Anderson also recovered threatening messages from Thames to Tillman, with one message stating, “Fixing to get this circle set up for you all boys.” Similarly, Tillman’s third statement recounted, “They met up down the street from my house at his house then [Thames] text me saying they finna spin in. Jock said he was finna kill me so when I see him he told me I better shoot my gun. They came through, I shot” Further, Michael testified that Thames had a weapon in his glove compartment even though he did not use it during the shooting. Major Anderson testified that Tillman told police Thames had an issue with Tillman and Nicks over a rap video with Travis’s girlfriend, who was the sister of one of Tillman’s friends, which explained the rift between

the two groups. Even though nobody in the three vehicles exhibited weapons, a reasonable jury could believe, after these immediate threats, Tillman thought those individuals driving by in the vehicles intended to cause him physical harm.

¶22. A jury instruction in a homicide case must be given if supported by the evidence, “no matter how meager or unlikely.” Additionally, the defendant is entitled to present his theory of defense. Based upon the evidence presented, a reasonable jury could have inferred Tillman, at sixteen years old, had a bona fide subjective belief that he had to shoot at the vehicles to protect himself. Tillman had just received a message, minutes before the vehicles passed by his house, that Thames and Jock were going to kill him. The State asserts that since the individuals in the vehicles simply drove by and did not brandish a weapon before Tillman began shooting, a jury instruction on imperfect self-defense was not supported by the evidence. However, the prior verbal threats against Tillman support the instruction even if his fears were unfounded. Indeed, Tillman’s theory of the case was that he fired his gun out of fear that Thames or someone in his group was going to follow through on their recent threats to kill him. A reasonable jury could have found Tillman not guilty of first-degree murder, but guilty of imperfect-self-defense manslaughter. We conclude the trial court erred in refusing jury instruction D-12.

¶23. The separate opinion would have us affirm Tillman’s conviction, contending no factual basis existed for Tillman’s subjective belief that he was in imminent danger at the time he began shooting. The separate opinion points to the fact that Travis’s truck, the last of the three, was the only vehicle struck by bullets and that Tillman did not start shooting

until Travis was well past the shooters. We disagree with this interpretation of the evidence, which shows the three vehicles were closely following each other. Chapman, driving the second vehicle, agreed with the prosecutor that the three vehicles “were pretty much going down the road one behind the other,” as did Travis’s brother Michael, who was a passenger in the first vehicle. Chapman testified that he was unsure if they were shooting at his vehicle. Michael did testify that he heard shots after they had passed Tillman. More importantly, the vehicles were moving slowly as they passed the gray house, which Tillman could have interpreted as threatening in light of the threats that had been made. The separate opinion does not take these threats into account, quoting the trial court’s conclusion that the content was “vague.” With respect, we disagree with both the separate opinion and the trial court. Major Anderson testified that Thames was sending Tillman threatening messages on the day of the shooting. Thames and Tillman were communicating back and forth, and one message sent at 2:54 p.m., approximately twenty minutes before the shooting, stated: “Fixing to get this circle set up for you all boys.” Additionally, Tillman’s first statement said that “[a] few minutes” before the shooting, “I received a phone call . . . saying they [(Davion Thames and Jock (Jacquez Evans))] was going to kill me.” In Tillman’s third statement, he further related: “They met up down the street from my house at his house then [Thames] text me saying they finna spin in[.] Jock said he was finna kill me so when I see him he told me I better shoot my gun. They came through, I shot” There is nothing vague or remote about these threats. These messages Tillman received minutes before the shooting could have led him to believe—in hindsight, incorrectly—that he was in danger and,

therefore, justify the imperfect self-defense instruction.

¶24. Accordingly, we reverse Tillman’s conviction and remand for a new trial on this issue.

B. Culpable Negligence Manslaughter Instruction

¶25. Tillman also argues that the trial court erred in refusing his lesser-included-offense jury instruction on culpable negligence manslaughter.

¶26. “Manslaughter by culpable negligence has been defined as ‘such gross negligence . . . as to evince a wanton or reckless disregard for the safety of human life, or such an indifference to the consequences of an act under the surrounding circumstances as to render such conduct tantamount to willfulness.’” *Skinner v. State*, 385 So. 3d 406, 416 (¶36) (Miss. Ct. App. 2023) (quoting *Shumpert v. State*, 935 So. 2d 962, 967 (¶14) (Miss. 2006)). Further, Mississippi Code Annotated section 97-3-47 (Rev. 2020) states: “Every other killing of a human being, by the act, procurement, or culpable negligence of another, and without authority of law, not provided for in this title, shall be manslaughter.” A defendant charged with murder, however, is not automatically entitled to a manslaughter jury instruction without an evidentiary basis. *Edwards v. State*, 357 So. 3d 1120, 1127 (¶23) (Miss. Ct. App. 2022) (citing *Hurns v. State*, 616 So. 2d 313, 320 (Miss. 1993)).

¶27. Tillman proposed jury instruction D-8, which was the definition of culpable negligence:

Culpable negligence is negligence of a degree so great as to be equal to a complete disregard or indifference to the safety of human life. Negligence is doing something that a reasonably careful person would not do under similar circumstances or failing to do something that a reasonably careful person

would do under similar circumstances.

During the instruction conference, the prosecutor accurately noted that the defense had also offered two instructions on heat-of-passion manslaughter, but there was no “culpable negligence manslaughter instruction that would make D-8 necessary.” Defense counsel offered that he would withdraw D-8 on culpable negligence if the trial court would give the two heat-of-passion instructions. The State argued that it offered an instruction on second-degree (depraved-heart murder) as an alternative to first-degree murder, which “fits” the evidence better than manslaughter. The trial court ultimately refused the defense’s heat-of-passion instructions, as well as the culpable negligence instruction. The trial court found: “As far as culpable negligence goes, the only evidence in this case is that the defendant intentionally fired a weapon at those vehicles. That’s not negligence. It’s an intentional act.” We agree.

¶28. First, we note Tillman did not offer an element instruction on culpable negligence manslaughter; he offered a definition of culpable negligence. Regardless, the evidence did not warrant that instruction. It is well established that “[a]n intentional act that causes death cannot constitute culpable negligence.” *Cunningham v. State*, 431 So. 3d 799, 813 (¶40) (Miss. Ct. App. 2025) (quoting *Smith v. State*, 171 So. 3d 542, 546 (¶10) (Miss. Ct. App. 2015)); *Goff v. State*, 778 So. 2d 779, 782 (¶6) (Miss. Ct. App. 2000) (citing *Hurns v. State*, 616 So. 2d at 321). Tillman admitted that the shooting was intentional and not an accident, but he said he shot out of fear. In *Cunningham*, this Court affirmed the refusal of a culpable negligence manslaughter instruction because the defendant claimed he shot the victim “out

of fear” that the victim would take the gun from him and shoot him. *Cunningham*, 431 So. 3d at 813 (¶41). We find the same. Here, there is no evidence of negligence by Tillman, who intentionally shot at the vehicles.

¶29. Tillman cites *Windham v. State*, 602 So. 2d 798, 801 (Miss. 1992), for the proposition that culpable negligence manslaughter and depraved-heart murder “are distinguishable simply by degree of mental state of culpability.” Tillman contends that once the trial court granted the request for an instruction on depraved-heart murder, the evidence would “effectively” support culpable negligence. However, the Mississippi Supreme Court rejected this same argument in *Chandler v. State*, 946 So. 2d 355, 359-61 (¶¶15-24) (Miss. 2006). There, the defendant argued that culpable negligence manslaughter was a lesser-included offense of depraved-heart murder under *Windham*. *Id.* at 359 (¶16). The supreme court, however, found no evidentiary basis in the record to support an instruction on culpable negligence manslaughter because the defendant admitted he pulled out the gun, aimed, and shot. *Id.* at 361 (¶24). Here, the same principle applies. The trial court did not err in refusing the culpable negligence instruction or the heat-of-passion manslaughter instructions because there was no evidence to support them.

II. Motion to Suppress Tillman’s Statements

¶30. Tillman claims the trial court erred in denying his pro se motion to suppress his three statements to law enforcement. Before trial, Tillman wrote a letter from the county jail to the Scott County Clerk of Court requesting dismissal of his charges because Major Anderson and Investigator Patrick ignored his request for an attorney and continued their

interviews in violation of his *Miranda* rights. Tillman further contended that the officers threatened and coerced him to waive his *Miranda* rights and to give the statements. At trial, during Major Anderson's direct examination, defense counsel objected to the State's initiating questions about Anderson's October 17, 2022 interview of Tillman. The trial court held a suppression hearing, outside the presence of the jury, where Major Anderson, Investigator Patrick, and Tillman testified.

¶31. Major Anderson and Investigator Patrick testified that they took all three statements from Tillman, but none were audio or video recorded. Anderson testified that during the first statement on October 17, he read Tillman his *Miranda* rights. No threats or offers of reward or leniency were made to induce the statement. Tillman then blurted out to the court, "He's lying." Anderson reiterated that no threats were made and continued that Tillman never asked for an attorney to be present or for the questioning to stop during the two-hour interview. Additionally, Anderson testified, "We actually took our time to explain each one of them [*Miranda* rights] to him because of his age [and] . . . education level. Made sure that [we] put it in layman's terms to make sure that he understood it." Tillman acknowledged that he understood his rights, but the officers "went back through them again just to make sure." Also, on the *Miranda* waiver form, Tillman marked "yes" to understanding that he had the right to talk to an attorney and that he wanted to speak to the officers. Anderson testified that Tillman gave a verbal statement which Investigator Patrick wrote down in Anderson's presence. Tillman signed the statement, which was entered into evidence. However, Anderson admitted that there were many verbal statements by Tillman

not reduced to writing during the interview, but they were included in the supplemental police report, which was entered into evidence only for identification purposes. Major Anderson testified that for Tillman's second and third statements on October 19 and 31, Tillman was properly given his *Miranda* warning, and there were no threats, promises, or offers to induce the statements. Further, Anderson again testified that Tillman did not request an attorney but agreed to talk to the officers. Tillman signed a *Miranda* waiver form in acknowledgment. Investigator Patrick's testimony confirmed Anderson's testimony about the interviews.

¶32. Tillman, however, testified that on October 17, his mother and grandmother took him to the police station, where Major Anderson led Tillman to a conference room and told his mother they would be right back. Then Anderson told Tillman that his mother and grandmother had left him and started questioning. Tillman initially denied that he was on the scene. He recounted that he was asked to sign a paper but did not know "what it was." Tillman testified that he was told "it's not saying you're doing anything or you did anything." Tillman denied giving a statement on October 17 and stated that on that day, he was arrested, booked, and confined to "lockdown" for two days. The officers then questioned Tillman again, and he contended that is when he made his first statement.⁵ Tillman testified that he asked for an attorney but was told "[Y]ou didn't do anything, why you need an attorney? You're not getting no attorney until I talk to you." Tillman also testified that he asked to call his mother so she could get him an attorney but was told "they

⁵ Tillman claims his first statement was taken on October 19, not October 17.

already know where you at.” Tillman denied being read his *Miranda* rights and claimed he was denied his repeated requests for an attorney. However, Tillman admitted his signature was on the *Miranda* waiver forms. Tillman testified that he was denied an attorney during the second interview as well. He did not request an attorney during the third interview, however, because “[t]hey kept denying me my right to an attorney. Told me I won’t get one.” Finally, Tillman claimed the first statement which Anderson wrote down for him was not his words but “[w]ords that they put in my mouth.”

¶33. At a hearing on a motion to suppress the voluntariness of a confession, the State bears the burden to prove, beyond a reasonable doubt, that the confession was voluntary. *Burford v. State*, 320 So. 3d 502, 510 (¶16) (Miss. 2021). “A defendant’s confession may be allowed into evidence over objection only where the trial judge finds the confession was intelligently, knowingly, and voluntarily made, rather than bargained for with promises, threats, or inducements by law enforcement officers.” *Id.* (quoting *Johnson v. State*, 129 So. 3d 148, 150 (¶10) (Miss. 2013)). “The trial court must determine from the totality of the circumstances whether the confession was ‘the product of the accused’s free and rational choice.’” *Id.* (quoting *Porter v. State*, 616 So. 2d 899, 907-08 (Miss. 1993)).

¶34. Our standard of review of the “fact findings made at a suppression hearing is limited.” *Taylor v. State*, 330 So. 3d 758, 764 (¶14) (Miss. 2021) (quoting *Jones v. State*, 461 So. 2d 686, 694 n.5 (Miss. 1984)). As long as those findings are supported by substantial credible evidence, we will not disturb them. *Id.* Further, the trial judge “sits as the trier of fact and must determine whether the incriminating statement was freely and

voluntarily given,” and whether the defendant was advised of his rights. *Id.* (quoting *Chim v. State*, 972 So. 2d 601, 603 (¶9) (Miss. 2008)). “As long as the trial judge applies the correct legal standards, his [or her] decision will not be reversed on appeal unless it is manifestly in error, or is contrary to the overwhelming weight of the evidence.” *Id.* (quoting *Neal v. State*, 57 So. 3d 1271, 1277 (¶14) (Miss. 2011)).

¶35. Tillman first argues that the practice by law enforcement of not recording his interviews, either by video or audio, “deprived Tillman of a reliable determination” regarding the voluntariness of his confessions.⁶ Tillman also complains that his two-hour interview was condensed by the officers into a two-page statement written by them, which “cherry-picked” Tillman’s narrative, creating an inaccurate statement, which a recording would have rectified. However, Tillman cites no legal authority in support of his complaints. Indeed, in Mississippi, neither our courts nor our constitution require that custodial interrogations be recorded. *Williams v. State*, 522 So. 2d 201, 208 (Miss. 1988). Further, the absence of such a recording does not render the statements inadmissible. *Id.* We find no merit to this argument.

¶36. Tillman also argues that his suppression hearing was “unreliable” because too many essential facts were undeveloped and unexplored. We disagree. “Whe[n] a criminal defendant challenges the voluntariness of a confession, he has a due process right to a

⁶ The State argues that Tillman’s argument is waived because on appeal he raises a new challenge about the interview process itself, which was never presented to the trial court, and abandons the argument he presented to the trial court on requesting counsel. “Issues not brought before the trial court are deemed waived and may not be raised for the first time on appeal.” *Smith v. State*, 986 So. 2d 290, 296 (¶12) (Miss. 2008). Notwithstanding possible waiver, we shall address the merits of his argument.

reliable determination that the confession was in fact voluntarily given.” *Burford*, 320 So. 3d at 510 (¶16). The trial court must hold a hearing outside the presence of the jury to determine the admissibility of the confession. *Id.* (citing *Wilson v. State*, 936 So. 2d 357, 362 (¶9) (Miss. 2006)). At the hearing, the State bears the burden to prove, beyond a reasonable doubt, that the confession was voluntary. *Id.* “The State makes a prima facie case that a confession was voluntary ‘by testimony of an officer, or other persons having knowledge of the facts, that the confession was voluntarily made without threats, coercion, or offer of reward.’” *Id.* (quoting *Johnson*, 129 So. 3d at 151 (¶12)). “If, after the State makes a prima facie case, the defendant testifies that the confession was induced . . . , then the burden shifts back to the State to rebut the defendant’s testimony with testimony from ‘those persons who are claimed to have induced a confession through some means of coercion.’” *Id.* (quoting *Thorson v. State*, 653 So. 2d 876, 888 (Miss. 1994)).

¶37. Tillman’s suppression hearing followed the proper procedure. Tillman and the two officers performing the interviews testified at length and in detail. Tillman was represented by counsel, who cross-examined the officers. Just because the officers’ and Tillman’s testimonies differed regarding the circumstances of the interview does not mean the hearing itself was “unreliable” or improper. The trial court did not err in admitting Tillman’s three statements. Under our standard of review, the trial court did not commit manifest error or apply an incorrect legal standard but properly found there was substantial credible evidence that Tillman waived his right to counsel and that his confessions were voluntary.

CONCLUSION

¶38. The trial court did not err in refusing Tillman’s instruction on culpable negligence manslaughter or in denying Tillman’s motion to suppress his statements to law enforcement. However, the trial court did err in refusing Tillman’s instruction on imperfect self-defense. Accordingly, we find it necessary to reverse Tillman’s conviction and sentence and remand the case for a new trial.

¶39. **REVERSED AND REMANDED.**

CARLTON, P.J., WESTBROOKS, McDONALD, McCARTY, WEDDLE AND LASSITTER ST. PÉ, JJ., CONCUR. EMFINGER, J., CONCURS IN PART AND DISSENTS IN PART WITH SEPARATE WRITTEN OPINION, JOINED BY WILSON, P.J., AND LAWRENCE, J.

EMFINGER, J., CONCURRING IN PART AND DISSENTING IN PART:

¶40. I concur with the finding of the majority that the trial court did not err by refusing the Tillman’s proposed instruction on culpable negligence manslaughter and that the trial court did not err by denying Tillman’s motion to suppress his statements to law enforcement. I, however, would also find that the trial court did not err by refusing Tillman’s requested instruction on imperfect self-defense. Because I would affirm Tillman’s conviction and sentence, I respectfully dissent.

¶41. It appears from the appellate record that neither the State nor the defense gave an opening statement to the jury.⁷ The State called six witnesses who testified before the jury. As noted by the majority, statements made by Tillman were admitted into evidence during the State’s case-in-chief. Forty-nine exhibits were admitted into evidence. Neither Tillman, nor any witness on his behalf, testified at trial.

⁷ Closing arguments were given, but are not a part of the appellate record.

¶42. Tillman was indicted for first-degree murder in the death of Travis Pernell Jones Jr. (Travis). After the close of the evidence, the trial court conducted a jury instruction conference. The State tendered instructions on first-degree murder and second-degree murder. Those instructions were given without objection by the defense. Five defense instructions were given without objection by the State. While no self-defense instruction was requested by the defense, two heat-of-passion manslaughter instructions, D-9 and D-10, were submitted on Tillman's behalf. As noted by the majority, the defense submitted D-8, an instruction defining culpable negligence manslaughter, but did not submit an elements instruction for that lesser-included offense. During the instruction conference, the defense offered to withdraw D-8 if the court would give D-9 and D-10. In support of the heat-of-passion manslaughter instructions, defense counsel argued:

[F]rom his statement . . . there doesn't seem to be any intent to particularly kill anyone in the car. They just started shooting . . . We've talked about the problems they had about the messaging or calling back and forth. But [Tillman] also says that they didn't mean to shoot the last guy or shoot that vehicle at all. It just came into the stream of fire. I think it fits a heat of passion that he just suddenly decided he would start [shooting], and he did, and this other person *was killed by accident*. I think it fits manslaughter.

(Emphasis added). The State responded that firing all those shots at the vehicles fits under second-degree murder. The defense then argued:

But in the fact scenario that we have here today where he says we didn't mean to shoot that person or that vehicle, just firing shots - - because there's 27 shots fired and the first two vehicles weren't even hit. So they were shooting but they weren't even necessarily shooting at those vehicles . . . I said 27, 74. I think given that fact scenario I think the jury could be justified in finding it was manslaughter.

The trial court ultimately refused the heat-of-passion manslaughter instructions, finding

there was no factual basis to support them. The denial of his requests for those instructions was not raised by Tillman as an issue on appeal.

¶43. At the conclusion of the jury instruction conference, Tillman’s counsel, for the first time, advised the court that he would like to prepare and submit an imperfect self-defense manslaughter instruction. The court stated that if counsel offered another instruction, the court would rule on it. After a recess, it appears that Tillman’s counsel submitted an imperfect self-defense instruction as D-12. There is no argument in the record in support of or in opposition to this instruction. Apparently without argument, the trial court ruled from the bench that there was no evidentiary basis to support the instruction. The trial judge stated:

As I’ve stated in our discussion of some of the other instructions, the only possible threat that Mr. Tillman had was this vague message that came at least some minutes, maybe hours, before this incident, which was to the effect that a person who wasn’t even in these cars was going to get him. And I think another message from Davion, who is in the first car if I remember right, was going to get some people together or something vague like that. But at any rate, whatever the message said, they were hardly an imminent threat that anybody was about to do physical, bodily harm to him or cause his death. All these cars were [doing was] driving past his house or past the house he was at. He says in his own statement that nobody in those vehicles shot at them, that they didn’t see anybody in those vehicles with a firearm or weapon of any kind. They just drove by and they decided to start shooting at them. And that hardly supports a self-defense instruction, perfect or imperfect. Therefore D-12 is refused.

¶44. Concerning when an imperfect self-defense instruction should be given, this Court stated in *Cruz v. State*, 305 So. 3d 149, 156 (¶18) (Miss. Ct. App. 2020):

Imperfect self-defense is not a defense to a criminal act but only a circumstance that may downgrade an intentional killing from murder to manslaughter. *Brown v. State*, 222 So. 3d 302, 307 (¶21) (Miss. 2017); *Ronk*

v. State, 172 So. 3d 1112, 1126 (¶22) (Miss. 2015). “[U]nder the theory of imperfect self-defense, an intentional killing may be considered manslaughter if done without malice but under a bona fide (but unfounded) belief that it was necessary to prevent death or great bodily harm.” *Brown*, 222 So. 3d at 307 (¶21) (quoting *Ronk*, 172 So. 3d at 1126 (¶22)). In other words, there must be evidence that the defendant “subjectively” believed “in . . . her own mind” that she was in imminent danger of death or great bodily harm. *Id.* (quoting *Cook v. State*, 467 So. 2d 203, 207 (Miss. 1985)).

¶45. Tillman contends that he had received messages or calls from Davion Thames and Jacquez Evans, also known as “Jock,” in which they threatened to kill him. One of the messages was apparently sent within an hour before the actual shooting that resulted in Travis’ death. This evidence was presented to the jury by the State’s admission of Tillman’s pretrial statements to law enforcement. The majority finds that a factual basis existed to support the requested imperfect self-defense instruction and that the trial court erred by refusing the instruction. In paragraph 22, the majority reasons:

Based upon the evidence presented, a reasonable jury could have inferred Tillman, at sixteen years old, had a bona fide subjective belief that he had to shoot at the vehicles to protect himself. Tillman had just received a message, minutes before the vehicles passed by his house, that Thames and Jock were going to kill him However, the prior verbal threats against Tillman support the instruction even if his fears were unfounded. Indeed, *Tillman’s theory of the case*^[8] was that he fired his gun out of fear that Thames or someone in his group was going to follow through on their recent threats to kill him.

(Emphasis added). After my review of the record, I disagree.

⁸ The defense’s “theory of the case” was not placed before the jury during opening statements because there were no opening statements. It was not placed before the jury by the defense witnesses because there were none. Tillman’s theory of the case, based upon the instructions he submitted, was that he committed heat-of-passion manslaughter or that he was guilty only of culpable negligence manslaughter. It was only after the close of all the evidence, and after those instructions were denied during the jury instruction conference, that the defense first proposed the imperfect self-defense instruction.

¶46. Daylan Chapman testified as part of the State’s case-in-chief.⁹ Chapman testified that on the day of Travis’ death, he went to the Jones residence on Johnson Town Road to visit and play video games. The record shows that Travis and his mother and his three brothers, Jaclarence, Michael, and LeBron, were at the residence at the time.¹⁰ On his way to the Jones residence, Chapman passed Tillman in the front yard of a gray house, also on Johnson Town Road, about 200 yards before the Jones residence.¹¹ Chapman noticed Tillman in front of the house dancing and holding a handgun, but Chapman had no interaction with Tillman. Chapman continued on to the Jones residence where he visited and played video games. At some point while he was there, Davion Thames arrived at the Jones residence and visited with the group.

¶47. According to the testimony of Chapman and Travis’ brother Michael, about ten minutes after Thames arrived at the residence, the whole group left to go to Walmart. The group left in three separate vehicles because they were going to different places after the Walmart trip. Thames and Travis’ brothers were going to Lawrence to visit family, Chapman was going to his residence in Lawrence, and Travis was going to get a haircut. The evidence shows that as the group was leaving the Jones residence, Thames’ vehicle was first in line, followed by Chapman, and then Travis. They were traveling slowly on the winding country road and were about two car lengths apart. Thames and Travis’ brothers

⁹ Travis was Chapman’s first cousin.

¹⁰ They were not in school because it was fall break.

¹¹ According to the evidence, Tillman was staying at this residence with Jordan Pace and other members of Pace’s family.

were in Thames' white truck, Chapman was alone in his silver Impala, and Travis was alone in his truck.

¶48. Tillman told law enforcement that no shots were fired from any of the vehicles as they passed, and he did not see anyone in the vehicles with a weapon. However, *because he thought someone was going to start shooting*, he started shooting. Tillman said both Nicks and Morgan started shooting as well. According to the record, these three fired at least 74 shots based upon the number of shell casings found in three different groupings.

¶49. Michael, who was in the first vehicle with Thames, testified that he did not hear any shots until well after they passed the place where Tillman was standing. Michael also testified that Thames' white truck was not hit by the gunfire. According to Michael, no one in the truck exhibited a weapon as they passed by Tillman. He told the jury that there was a handgun in Thames' glove box, but the gun was never removed. Michael also confirmed that no one in Thames' truck fired any shots.

¶50. Chapman testified that he did not hear any shots until after he had passed Tillman and that his vehicle was not struck by the gunfire. Travis' truck was the only vehicle damaged by gunfire, and it was struck once in the driver's side and multiple times from the rear. The back window of Travis' truck was shot out, there was a bullet hole in the tailgate, and Travis, the driver, was shot in the back of his head.

¶51. Tillman told law enforcement that they did not intend to shoot the last vehicle: "it just kind of came into the shooting that was going on." However, the last vehicle was the only one struck by gunfire. *The evidence clearly shows that Tillman and the others did not start*

shooting until the first two vehicles were well past where Tillman and the others were standing. The third vehicle to pass by, Travis' truck, was struck on the side and rear. Tillman and the others were shooting at the rear of the vehicles and were not in "imminent" danger when they started shooting. Thames was in the first vehicle, which was well down the road, and Jock was in Newton County at the time of the shooting.

¶52. I would find that the trial court did not err by refusing to give the imperfect self-defense instruction that was submitted as an afterthought. There was no factual basis for Tillman to subjectively believe that he was in imminent danger of death or great bodily harm at the time he began shooting. Imminent danger, if it ever existed, passed along with the vehicles as they continued to travel south on Johnson Town Road toward Highway 80 on their way to Walmart. I would affirm Tillman's conviction and sentence.

WILSON, P.J., AND LAWRENCE, J., JOIN THIS OPINION.