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Auburn man's acquittal in shooting death is rare example of a successful claim of self-defense

by **Judy Harrison**

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Wednesday's acquittal of Gage Dalphonse in a 2019 shooting death at the Auburn Walmart was just the second time in more than two years that a jury has found a defendant not guilty of both murder and manslaughter.

It's rare for Maine juries to hand up "not guilty" verdicts in murder trials. What's even rarer is what happened Wednesday: A jury concluded a defendant who claimed he was acting in self-defense was guilty of neither murder nor manslaughter. More often than not in that circumstance, a jury that finds a defendant not guilty of murder finds him guilty of a lesser manslaughter charge.

Dalphonse, 23, of Auburn maintained that he acted in self-defense when he leaned out the driver's side window of his car on July 27, 2019, and shot Jean Fournier, 41, of Turner twice in the back as he was running away, according to testimony at his six-day trial in Augusta.

The confrontation started after Dalphonse shouted an insult at Fournier's girlfriend as both men drove into the Walmart parking lot. The much larger Fournier walked over to Dalphonse's car and demanded an apology. At

one point, Fournier punched Dalphonse in the face and reached inside the car in what a witness described as an attempt to open the door and pull Dalphonse out. Fournier walked away but began running when he saw the gun.



Gage Dalphonse

The last defendant found not guilty of both murder and manslaughter was acquitted in June 2018 by a York County jury. Timothy Ortiz, now 27, of New York City claimed he acted in self-defense when he killed a man in a Biddeford apartment that was being used as a drug den.

Defense attorney Luke Rioux of Portland argued that Ortiz was choked before he fired three shots. The fatal one hit Jonathan Methot, 30, of Biddeford in the face on Sept. 26, 2016.

Proving self-defense can be tricky, Rioux said.

But legally, it's not up to the defense to prove a defendant acted in self-defense. It's up to the prosecution to prove that the defendant committed murder or manslaughter, said Deputy Attorney General Lisa Marchese, who heads the attorney general's criminal division and has handled hundreds of homicide cases.

"Under Maine law, the state must disprove beyond a reasonable doubt the absence of self-defense," she said. "In other words, Dalphonse did not have the burden of proving he acted in self-defense but rather the state must first prove that Dalphonse committed murder or manslaughter and then disprove beyond a reasonable doubt that Dalphonse acted in self-defense."

While the burden of proving murder or manslaughter rests with the prosecution, it's difficult for the defense meet the legal standard for self-defense — convincing a jury that a defendant reasonably believed the victim was about to **use unlawful deadly force** and that the defendant was unable to retreat from the encounter, Rioux said.

"There are many sorts of avenues by which the prosecution can disprove self-defense," he said. "The defense really has to walk a tightrope to achieve a 'not guilty' verdict."

In self-defense cases, defendants don't dispute "who did it," Rioux said. It is up to the defense to explain how the result came about.

“In the end, it’s a narrative story,” he said. “You must explain for jurors the story the forensic evidence tells and why the defendant acted under the reasonable belief that the use of deadly force against him was imminent.”

A “guilty” verdict on manslaughter rather than murder is much more common in cases in which a defendant claims self-defense. Defense attorneys in murder trials often ask judges to instruct juries on the requirements for manslaughter — as happened at Dalphonse’s trial — as an alternative to murder.

A manslaughter conviction eliminates the possibility of a life sentence. The punishment for murder is between 25 years and life in prison, which manslaughter carries a maximum sentence of 30 years. No portion of a murder sentence can be suspended while a portion of a manslaughter sentence can.

That was the outcome for a Connecticut man convicted of manslaughter, but not murder, for killing his girlfriend’s husband in Bangor on Easter Sunday in 2017.

Antoinne Bethea, now 44, was sentenced in September 2018 to 26 years in prison with all but 18 years suspended. Bethea killed Terrance Durel Sr., 36, of New Orleans on April 16, 2017, outside the home Bethea shared with Durel’s estranged wife on Highland Avenue. He claimed he acted in self-defense after Durel sent his estranged wife a threatening text.

A jury in August 2018 deliberated for three hours before finding Bethea guilty of manslaughter but not guilty of murder. Bethea is now incarcerated at the Maine State Prison in Warren. His earliest possible release date is Sept. 6, 2031.

Although Rioux's client Ortiz was acquitted, he was not released. Two days after the verdict, **he was charged in federal court** with one count of being a felon in possession of a firearm.

Ortiz was forbidden from possessing a firearm due to a 2016 conviction in Cumberland County on charges of aggravated sex trafficking and unlawful furnishing of scheduled drugs.

Ortiz pleaded guilty to the federal charge on Aug. 29, 2019 — more than a year after his acquittal on murder and manslaughter charges — and was sentenced to seven years and eight months in prison.

That's a much shorter sentence than if he'd been convicted of murder or manslaughter. He is incarcerated at the Big Sandy Penitentiary in Inez, Kentucky, according to the U.S. Bureau of Prisons. His earliest possible release date is April 12, 2025.