STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BEULAH BUTLER,

PETITIONER

APPELLATE CASE NO. 2011-194608

BRIEF OF PETITIONER

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INDEX

TABLE OF AUTHORITIES

Cases

QUESTIONS PRESENTED

1.

Whether the Court of Appeals erred by essentially ignoring petitioner's argument that it was error for the trial judge to deny petitioner's motion for a directed verdict as a matter of law on self-defense where the trial judge ruled he would not apply the standard that the state had to disprove self-defense beyond a reasonable doubt on directed verdict motions, since that was the proper standard, and the evidence was undisputed that petitioner was being attacked by her angry decedent boyfriend in her own home at the time he was stabbed, and petitioner was entitled to a directed verdict as a matter of law on self-defense under the proper standard under these circumstances?

2.

The Court of Appeals erred, even if it ruled the judge applied the right standard, by holding it was not error for the judge to deny petitioner's motion for a directed verdict as a matter of law on self-defense where the evidence was undisputed that petitioner was being attacked by her angry decedent boyfriend in her own home at the time he was stabbed, and petitioner was entitled to a direct verdict of self-defense as a matter of law?

STATEMENT OF THE CASE

Procedural history

Petitioner was indicted by the Lexington County grand jury for the offenses of voluntary manslaughter, and possession of a firearm or a knife during the commission of a violent crime. ROA 814. The decedent was her boyfriend, and two experts testified petitioner was a battered woman and suffered from post-trauma stress disorder. Her case was called to trial on February 25, 2008 before the Honorable R. Knox McMahon. Arie D. Bax and Sarah A. Hahn represented petitioner. David Shawn Graham and Debra B. Moore were the Assistant Solicitors. ROA 1.

At the conclusion of the trial on March 3, 2008 the jury found petitioner guilty on both counts. ROA 812, ll. 15 – 21. Judge McMahon sentenced petitioner to nine years imprisonment for voluntary manslaughter and he imposed a concurrent five year term for possession of a knife during the commission of a violent crime. Judge McMahon also found by preponderance of the evidence that there was credible evidence that petitioner suffered from a history of criminal domestic violence under that parole statute. Supp. ROA. 1, l. 14 – 813, l. 4.

The Court of Appeals affirmed on direct appeal. See, State v. Beulah R. Butler, 2011-UP-127 (filed March 28, 2011). App. 1-3. Petitioner filed for rehearing. App. 4-8. Rehearing was denied. App. 10.

Petitioner then filed a petition for writ of certiorari with this Court, and the state filed a return. This Court granted certiorari in its order dated February 22, 2013. This brief of petitioner follows.

Relevant Facts

Beulah Butler was diagnosed by Dr. Lois Veronen and Dr. Catherine Ross of Sistercare as being a battered woman who also suffered from post-traumatic stress disorder. ROA 640–646;

ROA 674–682. The decedent's mother, Doris Robinson, testified that petitioner talked to her on the telephone early in the morning on July 23, 2006 from petitioner's house. She said the decedent, whom petitioner dated, was very upset, and that she told Ms. Robinson to come over to her house. ROA 10, l. 13 – 18, l. 19.

Ms. Robinson admitted the decedent had problems with other women. She was aware of the fact that petitioner stated her son had hit her in the past. Ms. Robinson acknowledged she was aware that the decedent had been arrested for that abuse of petitioner. ROA 18, l. 12 – 19, l. 3. However, she also claimed she heard petitioner in the background taking the decedent to task for telephoning his mother on the morning of the fatal attack. ROA 10, l. 13 – 18, l. 19.

Annette Haltiwanger was petitioner's neighbor. She remembered that at about two a.m. on July 23, 2006 she heard some loud noises. ROA 22, l. 12 – 23, l. 21. Haltiwanger immediately grabbed her phone "because I live alone." ROA 23, ll. 15 – 22. Haltiwanger opened her door and saw petitioner's shadow in the house next door. She heard noise coming from petitioner's house, and she heard petitioner asking "Why?" to someone. ROA 24, ll. 1 – 20. Haltiwanger telephoned 911 and she saw the decedent lying on the floor. ROA 27, ll. 1 – 10.

Robert Sharpe was a reserve West Columbia police officer. He was dispatched to petitioner's house on the morning of July 23, 2006. ROA 38, l. 18 – 52, l. 23. Sharpe remembered the decedent was in "pretty grave condition" when he arrived. He had been stabbed, and it was undisputed petitioner was on floor trying to help or comfort the decedent when the police arrived. ROA 43, ll. 16 – 23. Sharpe said petitioner told him the decedent "rolled over on a knife." ROA 48, ll. 3 – 4.

Police officer John Reese testified that he learned the decedent got mad at petitioner because "a male called me on the phone" while they were out at a club. ROA 56, l. 9 – 57, l. 2. Reese

acknowledged petitioner's house was in total disarray with objects overturned, and that it was consistent with a major struggle having occurred there. ROA 69, l. 13 – 73, l. 11.

Investigator Charles Bramlett, Jr., testified he read petitioner her rights that morning when he arrived. ROA 75, l. 17 – 79, l. 5. Bramlett recalled petitioner telling him that while she was at Group Therapy, a club in Five Points in Columbia with the decedent. She received a phone call from another man. Bramlett remembered petitioner told him, once they arrived back at her house, that the decedent had choked her until she passed out. Bramlett said petitioner also told him that when she awoke the decedent began hitting her in the head with her VCR. ROA 79, l. 6 – 80, l. 9.

Bramlett acknowledged seeing marks on petitioner upper body, and cuts to her legs that morning. ROA 85, l. 20 – 86, l. 6. There were also photographs showing bruises taken three days later.

Colleen Belk, a West Columbia police officer, accompanied petitioner to the bathroom at the police station that morning. She testified petitioner was praying inside the bathroom "for the Lord's help." Belk maintained she told petitioner she also "may want to pray for Mr. Russell also, that he was in surgery at Palmetto Richland." Belk said petitioner responded that this was "was a whole lot of nothing, a mess about nothing . . ." ROA 130, ll. 2 – 13. This "whole lot of mess about nothing" alleged statement would be the solicitor's theme in his closing when he argued petitioner was not acting in self-defense. The solicitor added that if the jury did not think petitioner was guilty they should "give her this knife and send her home." ROA 130, ll. 2 – 13; ROA 778, 8 – 779, l. 10.

The decedent's blood alcohol reading at the time he was stabbed showed he had consumed seven or more drinks in a short period of time. It was estimated his blood alcohol reading at the time he attacked petitioner was .17. ROA 367, l. 12 – 369, l. 15.

Directed verdict motion

Defense counsel moved for a directed verdict arguing "none of the state's evidence has refuted any of these elements of self-defense." He noted the "the state bears the burden of disproving self-defense. He reminded the judge that the state introduced petitioner's statements regarding what occurred. ROA 412, l. 13 – 416, l. 17.

Counsel argued petitioner was without fault in bringing on the difficulty because the decedent physically attacked her because she received a phone call from another man. The evidence showed petitioner was choked and photographs corroborated her injuries. The evidence also showed that the house had been "trashed" as petitioner fought to protect herself. Counsel argued the state's evidence itself established self-defense as matter of law. ROA 665, l. 13 – 678, l. 5. Defense counsel cited State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978) in support of his motion. ROA 416, ll. 7 – 14.

The solicitor argued the state had disapproved the elements of self-defense and he claimed irrelevantly that the decedent did not have a duty to retreat because he also lived at the house. As will be seen infra, petitioner testified the decedent never lived at her house, and that he only visited. ROA 417, l. 6 – 420, l. 21.

Defense counsel argued the state had the burden of disproving self-defense beyond a reasonable doubt and even the state's evidence established self-defense beyond a reasonable doubt. ROA 421, l. 14 – 422, l. 17. The judge denied the motion ruling *he was not applying the standard that the state had the burden of disproving self-defense* beyond a reasonable doubt at the directed verdict stage. ROA 424, l. 10 – 425, l. 21. (emphasis added).

Defense case

During the defense case Dr. Lois Veronen was qualified as an expert in the area of battered woman syndrome and the study of victim's of trauma and violence. ROA 635, ll. 2 – 11. Dr. Veronen opined that petitioner was a battered woman and that she suffered from post-trauma stress disorder as a result of her relationship with the decedent. ROA 682, ll. 6 – 13.

Petitioner testified that her relationship with the decedent was a violent one. The decedent hit her for the first time in September of 2001. ROA 791, l. 7 – 798, l. 3. On another occasion, near the Christmas of 2001 the decedent threw a television set at her. The decedent also continuously accused petitioner of seeing, or considering other men. ROA 440, l. 1 – 441, l. 23. Petitioner was injured as a result of these continuous physical altercations. ROA 443, ll. 5 – 10; ROA 459, l. 14 – 460, l. 10; ROA 465, ll. 1 – 14; ROA 434, ll. 9 – 16.

On the night of the incident they were at a bar, Group Therapy. ROA 483, l. 7 – 484, l. 4. She got a phone call from another man, which angered the decedent. The decedent choked her until she "passed out," once they arrived back at her house. Petitioner said when she awoke the decedent had a scary look in his eyes. ROA 495, l. 1 – 496, l. 17. The decedent then grabbed the VCR by the cord and began hitting petitioner in the face with it. ROA 498, l. 16 –500, l. 5. She grabbed a knife because she was being beaten, and told the decedent to stay away. ROA 500, l. 17 – 502, l. 2.

She also related to the jury how *she was scared she would be killed* if the decedent was able to get the knife away from her. ROA 504, l. 11 – 506, l. 4. Petitioner *was defending herself,* and she testified that the decedent was stabbed accidentally as he attacked her. ROA 507, l. 13 – 544, l. 14.

Petitioner's eight-year-old daughter, Olivia Butler, testified that the decedent frequently beat petitioner. ROA 618, l. 3 – 619, l. 6. Dr, Catherine Ross, who worked at Sistercare, also opined

that petitioner was a battered woman and that petitioner suffered from post-traumatic stress disorder. ROA 682, ll. 6 – 13.

Finally, petitioner's neighbor Annette Haltiwanger testified that petitioner told her that defending herself against the decedent as he beat her, and that she was able to get a knife from the kitchen before the decedent was stabbed during the encounter. ROA 691, ll. 13 – 20.

Renewed directed verdict motion

At the conclusion of the evidence petitioner again moved for a directed verdict. Counsel again argued the state had failed to disprove each and every element of self-defense. The judge "reaffirmed" his earlier ruling stating the standard he was applying was the existence of *"any evidence"* of direct or circumstantial evidence standard. ROA 726, l. 7 – 727, l. 13.

The judge later charged the jury on self-defense and the battered woman's syndrome. ROA 792, l. 17 – 803, l. 5. The judge also ruled after petitioner was convicted of voluntary manslaughter that she was a battered woman entitled to parole eligibility after serving one-fourth of her sentence. Supp. ROA. 1, l. 14 – 813, l. 4.

Petitioner argued before the Court of Appeals that: "It was undisputed that appellant was attacked by her angry decedent boyfriend. Appellant was in her own home and she did not have a duty to retreat. Appellant was entitled to a directed verdict on self-defense as a matter of law given the evidence in this case. The judge *refused to apply the correct legal standard that the state had the burden of disproving self-defense beyond a reasonable doubt* at the directed verdict stage, and he did not consider whether the state's evidence negated appellant's claim of self-defense. The judge only applied the traditional *"any evidence"* standard of voluntary manslaughter without regard to self-defense. Brief at pp. 5-12.

The Court of Appeals affirmed without specifically ruling on the correct legal standard at the directed verdict stage. The Court of Appeals glossed over whether the correct standard was the one the trial judge applied here or whether the one trial counsel argued was the correct standard was actually the correct one. The Court ruled the state presented sufficient evidence "[n]egating the second element of self-defense that 'the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger." The Court of Appeals gave great weight to petitioner's statement that the decedent was killed by accident rather than in self-defense. App. 2-3.

Petitioner submits below that was a misstatement of petitioner's testimony since a person can be acting self-defense and the decedent be accidentally stabbed or shot to death. Further, it is evident from the opinion of the Court of Appeals that it improperly heavily weighed petitioner's credibility and incorrectly found self-defense and accident were mutually exclusive.

Petitioner argued on rehearing that the Court of Appeals essentially ignored his argument of the correct legal standard to be applied at the directed verdict stage, and also erred by simply ruling the state disproved the second element of self-defense without applying the beyond a reasonable doubt standard. App. 4-7. Rehearing was denied.

ARGUMENT

1.

The Court of Appeals erred by essentially ignoring petitioner's argument that it was error for the trial judge to deny petitioner's motion for a directed verdict as a matter of law on self-defense where the trial judge ruled he would not apply the standard that the state had to disprove self-defense beyond a reasonable doubt on directed verdict motions, since that was the proper standard, and the evidence was undisputed that petitioner was being attacked by her angry decedent boyfriend in her own home at the time he was stabbed, and petitioner was entitled to a directed verdict as a matter of law on self-defense under the proper standard under these circumstances.

In State v. Burkhart, 350 S.C. 262, 565 S.E.2d 298 (2002) this Court held that the failure of the trial court to give the requested instruction that the state had the burden of disproving self-defense by proof beyond a reasonable doubt was reversible error. See State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998). Defense counsel here argued at the directed verdict stage the state also had to disprove self-defense beyond a reasonable doubt where it was properly raised by the evidence.

Here, defense counsel moved for a directed verdict noting the abundance of evidence of self-defense, and he asked for a directed verdict on self-defense as a matter of law. Counsel further argued that the state had the burden of disproving self-defense beyond a reasonable doubt, and that the defense had instead established self-defense as a matter of law.

The trial court disagreed that standard at the directed verdict stage required that the state "disprove self-defense beyond a reasonable doubt." The trial judge stated that was not the proper standard at the directed verdict stage. See, also, State v. Addison, 343 S.C. 290, 293, 540 S.E.2d

449, 451 (2000). The judge later "reaffirmed" this ruling, and he stated the proper standard was the traditional "any direct evidence" standard of voluntary manslaughter to take the case to the jury.

Petitioner respectfully submits that the trial judge erred by refusing to apply the State v. Burkhart, State v. Wiggins, State v. Addison standard requiring the state to disprove self-defense beyond a reasonable doubt at the directed verdict stage.

If the trial court would have applied the correct standard it would have found there was an abundance of evidence that petitioner was viciously attacked in her own home and she feared – and she had to fear – for her life or of suffering great bodily harm. The state failed to disprove self-defense beyond a reasonable doubt.

Significantly, defense counsel also argued that petitioner was entitled to a directed verdict as a matter of law under State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978). Here, it was undisputed petitioner was attacked in her home, that she had no duty to retreat, and that she was injured during the decedent's attack. There was also no concrete evidence the decedent was living with petitioner as the solicitor argued. Further, two experts testified petitioner was a battered woman at the decedent's hands during the defense case, and that she suffered from PTSD because of her relationship with him. If nothing else, *by the conclusion of the defense case* self-defense had been established as a matter of law, and the state had not disproved self-defense beyond a reasonable doubt. Here, the trial judge insisted the proper standard was the traditional "any evidence" standard, and the fact this was a self-defense case was not going to move him from applying that standard. See State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000); State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 452 (1984).

In State v. Dickey, 394 S.C. 491, 716 S.E.2d 97 (2011) this Court held the defendant was entitled to a directed verdict. This Court stated that "the state is required to disprove the elements of

self-defense beyond a reasonable doubt," and when it does not disprove them beyond a reasonable doubt the defendant is entitled to a directed verdict. State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011).

Here, as seen, the trial court refused to apply the Burkhart, Wiggins, Addison standard when it denied petitioner's motion for a direct verdict. It is also apparent that the trial court did not consider whether the state's evidence negated petitioner's claim of self-defense. The trial court clearly stated he was applying the traditional "any evidence" standard at the directed verdict stage, and at the close of evidence, and not considering whether the state had disproved self-defense beyond a reasonable doubt, and he denied the directed verdict motion based on an erroneous legal standard.

Petitioner should now be granted an order of acquittal because the state did not disproved self-defense beyond a reasonable doubt as mandated by the correct legal standard. See State v. Dickey.

2.

The Court of Appeals erred, even if ruled the judge applied the right standard, by holding it was not error for the judge to deny petitioner's motion for a directed verdict as a matter of law on self-defense where the evidence was undisputed that petitioner was being attacked by her angry decedent boyfriend in her own home at the time he was stabbed, and petitioner was entitled to a direct verdict of self-defense as a matter of law.

Again, petitioner Beulah Butler was diagnosed by Dr. Lois Veronen and Dr. Catherine Ross of Sistercare as being a battered woman who also suffered from post-traumatic stress disorder. ROA 640–646; ROA 674–682. Annette Haltiwanger remembered that at about two a.m. on July 23, 2006 she heard some loud noises coming from petitioner's home. ROA 22, l. 12 – 23, l. 21.

Officer Sharpe recalled petitioner was on floor trying to help or comfort the decedent when the police arrived. ROA 43, ll. 16 – 23. Officer Reese learned the decedent got mad at petitioner because "a male called me on the phone" while they were out at a club. ROA 56, l. 9 – 57, l. 2. Her house was in total disarray with objects overturned, and that it was consistent with a major struggle having occurred there. ROA 69, l. 13 – 73, l. 11. Investigator Bramlett recalled petitioner telling him that the decedent had choked her until she passed out once they arrived back at her house. Petitioner also told him that when she "came to" the decedent began hitting her in the head with her VCR which was consistent with petitioner's testimony. ROA 79, l. 6 – 80, l. 9. She had marks on her upper body, and cuts to her legs that morning, and there were also photographs showing bruises that were taken three days later. ROA 85, l. 20 – 86, l. 6.

Again, petitioner testified that *she was scared she would be killed* if the decedent was able to get the knife away from her. ROA 504, l. 11 – 506, l. 4. She *was defending herself*, and she testified that the decedent was stabbed accidentally as he attacked her. ROA 507, l. 13 – 544, l. 14.

If the Court of Appeals held the judge properly denied the motion for a directed verdict pursuant to the State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978) standard that all the state had to do was raise any "direct evidence" petitioner was guilty of voluntary manslaughter or any direct evidence or substantial circumstantial evidence *negating* self-defense, petitioner was still entitled to a directed verdict under that standard. Hendrix was decided at a time when the accused had to prove self-defense by a preponderance of the evidence. This burden was definitely removed by State v. Bellamy, 293 S.C. 103, 359 S.E.2d 63 (1987) *overruled on other grounds* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991).

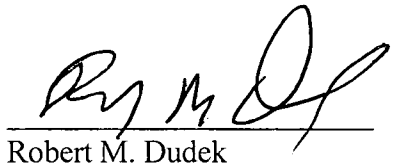
There was very strong evidence of an enormous struggle at petitioner's house, petitioner had undisputed injuries, petitioner said the decedent was stabbed while she fought and feared for her life. Petitioner was a battered woman and even the decedent's mother admitted she knew the decedent beat petitioner. The fact petitioner said the decedent was stabbed accidentally while she fought for her life did not deny her right to claim self-defense. See State v. Light, 378 S.C. 641, 664 S.E.2d 465 (2008).

Petitioner was entitled to a directed verdict of acquittal even if this Court determines the trial court correctly refused to apply the standard that the state had to disprove self-defense beyond a reasonable doubt by the close of evidence or prior to it where self-defense was properly raised. See State v. Bellamy, 293 S.C. 103, 359 S.E.2d 63 (1987) *overruled on other grounds* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991).

CONCLUSION

By reason of the foregoing arguments, petitioner's convictions should be reversed, and this case remanded to the Lexington County Court of General Sessions for a new trial.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER.

This 24th day of June, 2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

R. Knox McMahon, Circuit Court Judge

Opinion No. (S.C. Ct. App. filed 3/28/2011)
07-GS-32-3333 & 3334.

THE STATE,

RESPONDENT,

V.

BEULAH BUTLER,

PETITIONER

CERTIFICATE OF SERVICE

I certify that a true copy of the brief of petitioner in this case has been served on Mark Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and the S.C. Court of Appeals this 24th day of June, 2013.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 24th day
of June, 2013.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 2, 2013