STATE OF CONNECTICUT *v.* COURTNEY BRYAN
(SC 18776)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh and Harper, Js.*

Argued October 25, 2012—officially released February 19, 2013

Sarah Hanna, assistant state's attorney, with whom, on the brief, were *Brian Preleski*, state's attorney, and *Paul Rotiroti*, senior assistant state's attorney, for the appellant (state).

Glenn W. Falk, special public defender, for the appellee (defendant).

Opinion

ROGERS, C. J. The sole issue in this certified appeal is whether the trial court properly refused to instruct the jury on the defense of others, set forth in General Statutes § 53a-19,[1] in light of the evidence cited by the defendant in support of that justification defense. The defendant, Courtney Bryan, was convicted, after a jury trial, of assault in the first degree in violation of General Statutes § 53a-59 (a) (1)[2] and attempt to commit assault in the first degree in violation of General Statutes §§ 53a-49[3] and 53a-59 (a) (1). At trial, the defendant admitted to stabbing the victim, Abdelmoutalib Sofiane, but requested that the jury be instructed on his two theories of defense: that he was acting in self-defense, and that he was acting in defense of another. The trial court instructed the jury on the former, but refused to instruct on the latter.

The defendant appealed from the judgment of conviction to the Appellate Court. Concluding that the defendant had "met his burden of providing an evidentiary foundation to inject the issue of defense of others into the case," the Appellate Court held that the trial court's refusal to charge on the defense of others was improper. *State* v. *Bryan*, 126 Conn. App. 597, 609, 12 A.3d 1025 (2011). Accordingly, the Appellate Court reversed the judgment and remanded the case for a new trial. Id. We then granted the state's petition for certification to appeal, limited to the following issue: "Did the Appellate Court properly conclude that the trial court's failure to give a defense of others instruction required reversal of the judgment of conviction?" *State* v. *Bryan*, 300 Conn. 941, 942, 17 A.3d 477 (2011). Because the evidence in the record was insufficient to support the defendant's request to have the jury instructed on the defense of others, we reverse the judgment of the Appellate Court.

"In determining whether the defendant is entitled to an instruction of [defense of others], we must view the evidence most favorably to giving such an instruction." (Internal quotation marks omitted.) *State* v. *Terwilliger*, 294 Conn. 399, 408–409, 984 A.2d 721 (2009). Viewed in this light, the record reveals the following relevant facts. On March 1, 2007, Farrah Lawrence, the defendant's girlfriend, drove to Lincoln Technical School (school) in New Britain, where she was a student, to register for classes. Lawrence was accompanied by the defendant, who rode in her car. Lawrence got out of the car and walked toward the school building while the defendant remained in the car and listened to the radio. Soon thereafter, the victim pulled into the parking lot. He recognized Lawrence's car and parked parallel to it, leaving a few empty spaces between them.

The victim and Lawrence had dated for approximately two years, until Lawrence broke off their roman-

tic relationship in 2006 after the victim became "threatening" and "abusive." On one occasion, the victim came to her apartment, broke a lamp, smashed her television set, and demanded to "look inside [her] phone." When Lawrence refused to hand her telephone over, the victim pushed Lawrence and broke the telephone. Lawrence's friend, who was present during the altercation, called the police, who instructed the victim not to return to Lawrence's apartment. Lawrence called the defendant with her girlfriend's telephone immediately after this incident to tell him about it.

Notwithstanding the instructions of the police, the victim returned to Lawrence's apartment two weeks later, seeking to resume their romantic relationship. Lawrence told him she did not wish to do so. In response, the victim shouted at her and stabbed himself with a knife. Lawrence again called the defendant shortly after this incident.

On another occasion, when Lawrence was driving home from work with the defendant, the victim appeared alongside them in a van, and attempted to run them off the road while shouting and spitting at them. As they proceeded further down the road, the victim blocked their path, exited his vehicle and told the defendant and Lawrence that "he was going to fuck [them] up." Afterward, Lawrence and the defendant reported the incident to the police.

A few weeks later, the victim again showed up uninvited at Lawrence's house, banging on the patio door and demanding admittance. Lawrence refused, prompting the victim to attempt to smash the door with his head. When this proved unsuccessful, the victim shattered Lawrence's bedroom window with his fist, and proceeded to climb through the window frame as Lawrence ran out the front door. Police arrived at the scene minutes later. Lawrence called the defendant that night to recount the incident.

The victim also had physically abused Lawrence, and had threatened to kill her. On one occasion in early 2006, while Lawrence was riding with the victim in his car, he struck her with his arm, and then slammed on the brakes, causing her head to strike the window. On several occasions, the victim threatened that if Lawrence "[got] him in any trouble so he couldn't get his citizenship, he would kill [her] and run back to Morocco." In light of the foregoing, both Lawrence and the defendant were afraid of the victim.[4]

In support of his argument that he is entitled to a jury instruction on the defense of others, the defendant relies on aspects of the victim's testimony regarding the March 1, 2007 assault that contradict his own testimony. The defendant testified that on March 1, 2007, he was waiting in Lawrence's car, listening to the radio, when the victim's car pulled up alongside Lawrence's car.

The defendant testified that he did not notice the other car until the victim approached him, opened the passenger door of Lawrence's car, and lifted up his shirt to display a gun tucked into the waistband of his pants. The victim threatened to kill both the defendant and Lawrence, stating that Lawrence was "a bitch" and that he was "going to get her." The defendant testified that the victim then returned to his car and drove away. After this encounter, the defendant testified, he searched Lawrence's car for a pen to record the victim's license plate number, and discovered a knife in the glove compartment.

The defendant testified that the victim returned five to ten minutes later, and parked in the same space. The defendant watched the victim out of the corner of his eye. About thirty seconds later, the victim again opened the passenger door of Lawrence's car and told the defendant that "he was going inside of the building to f'ing kill [Lawrence]." As the victim walked toward the building, the defendant took the knife from the glove compartment, placed it in his pocket, and followed him. The defendant testified that the victim had entered the building, but was on his way out at the time the defendant arrived at the front door. As the two men passed each other, the defendant testified, the victim spat in his face and lunged at him, grabbing him around the neck. The victim then "went for his waistband." In response, the defendant removed the knife from his pocket. The two men struggled, but eventually separated when the victim declared, "you stabbed me!" Noticing that the victim was wounded, the defendant "panic[ked]," ran back to Lawrence's car and drove away. Shortly thereafter, the police contacted the defendant who confessed to stabbing the victim, and agreed to meet with the police to give a report of the incident.

The defendant gave somewhat contradictory testimony as to why he had stabbed the victim. As the Appellate Court observed, "[t]he defendant testified that the stabbing was accidental, but he also testified that he was acting in defense of himself and of Lawrence. The defendant first testified that he did not think he had to stab [the victim] but then said he did so in defense of himself and later said also that he did so in defense of Lawrence because he was afraid of what [the victim] might do to Lawrence and him." *State* v. *Bryan*, supra, 126 Conn. App. 601.

For his part, the victim testified that on March 1, 2007, he drove to the school in order to obtain copies of his transcripts, which he needed to apply for a job. The victim testified that he recognized Lawrence's car, but did not immediately recognize the defendant. The defendant, however, apparently recognizing the victim, began shouting at him to stay away from Lawrence or he would "get a gunshot" and "get hurt." The victim shouted back at the defendant and the fight escalated.

Sensing that "it was kind of getting bad at that point," the victim returned to his car and drove off, but soon turned around, realizing that he needed his transcripts. The victim returned to the same parking spot, got out of his car, and began walking toward the school. The victim testified that "right before [he] made it to the entrance, [he] heard someone walking behind [him]," and turned around to see the defendant holding a "knife in his right hand." The victim testified that "when [he] saw the knife, [he] tried to just run away [but] before [he] made it, [the defendant] stabbed [him] in [his] left chest." The victim denied having a gun, reaching for his waistband during the fight and threatening Lawrence or the defendant on that, or any other, occasion.

The parties submitted written requests to charge to the trial court. At a charging conference conducted by the trial court, *Espinosa*, *J.*, on February 27, 2009, the court granted the defendant's request for a jury instruction on self-defense, but denied his request for an instruction on the defense of others. The defendant was convicted of assault in the first degree in violation of § 53a-59 (a) (1) and attempt to commit assault in the first degree in violation of §§ 53a-49 and 53a-59 (a) (1). The trial court merged the convictions, and sentenced the defendant to six years imprisonment.

On appeal to the Appellate Court, the defendant argued that, "on the basis of the evidence presented, viewed in the light most favorable to [him], a jury reasonably could have found that [he] was protecting Lawrence when he stabbed [the victim]." *State* v. *Bryan*, supra, 126 Conn. App. 603. The Appellate Court agreed, concluding that the defendant had "met his burden of providing an evidentiary foundation to inject the issue of defense of others into the case." Id., 609. Accordingly, the Appellate Court reversed the judgment of conviction and remanded the case for a new trial. Id. This certified appeal followed.

The state now argues that no reasonable juror could have concluded that, at the time of the assault, the defendant actually or reasonably believed that Lawrence was in imminent danger because the defendant testified consistently that the victim was exiting the building, and therefore, was walking *away* from Lawrence, when the defendant stabbed him. To the extent the defendant reasonably feared the victim was about to harm Lawrence as he walked toward the school, the state contends, this fear became unreasonable when the victim "turn[ed] around" and left the building.

In response, the defendant claims that the state misrepresents his testimony; the defendant testified that the victim had "entered the building" by the time he reached the front door, but then "turned around" and came back out. The defendant contends that "the time frame was too short and [the victim's] 'turning around' [was] too ambiguous" to compel the conclusion that

the victim had abandoned his purpose (i.e., to harm Lawrence) and thus, to negate the defendant's reasonable belief that Lawrence remained in imminent danger at the time the defendant stabbed the victim. Moreover, the defendant argues, this court's precedents require that an instruction be given on any defense for which there is sufficient evidence in the record, even when the defendant's testimony squarely contradicts that defense. We agree with the state.

We begin our analysis with the standard of review. "[T]he fair opportunity to establish a defense is a fundamental element of due process of law . . . ." (Internal quotation marks omitted.) *State* v. *Edwards*, 234 Conn. 381, 388, 661 A.2d 1037 (1995), quoting *Washington* v. *Texas*, 388 U.S. 14, 19, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967). "This fundamental constitutional right includes proper jury instructions on the elements of self-defense so that the jury may ascertain whether the state has met its burden of proving beyond a reasonable doubt that the assault was not justified. See General Statutes § 53a-12 (a).[5] . . . Thus, [i]f the defendant asserts [self-defense] and the evidence indicates the availability of that defense, such a charge is obligatory and the defendant is entitled, as a matter of law, to [an] . . . instruction [on self-defense]." (Citations omitted; internal quotation marks omitted.) *State* v. *Edwards*, supra, 388.

The defenses of self-defense and defense of others are codified in § 53a-19 (a), which provides in relevant part: "[A] person is justified in using reasonable physical force upon another person to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force, and he may use such degree of force which he reasonably believes to be necessary for such purpose; except that deadly physical force may not be used unless the actor reasonably believes that such other person is (1) using or about to use deadly physical force, or (2) inflicting or about to inflict great bodily harm."

The defense of others, like self-defense, is a justification defense. These defenses operate to exempt from punishment otherwise criminal conduct when the harm from such conduct is deemed to be "outweighed by the need to avoid an even greater harm or to further a greater societal interest. . . . Thus, conduct that is found to be justified is, under the circumstances, not criminal." (Citations omitted; internal quotation marks omitted.) *State* v. *Singleton*, 292 Conn. 734, 748–49, 974 A.2d 679 (2009). "All justification defenses share a similar internal structure: special triggering circumstances permit a necessary and proportional response." (Internal quotation marks omitted.) Id., 749. "One common formulation of the necessity requirement gives the actor the right to act when such force is necessary to defend himself. But this formulation fails to highlight the two essential parts of the necessity requirement

. . . force should be permitted only (1) when necessary and (2) to the extent necessary. The actor should not be permitted to use force when such force would be equally as effective at a later time and the actor suffers no harm or risk by waiting." (Internal quotation marks omitted.) 2 P. Robinson, Criminal Law Defenses (1984) § 131 (c), p. 77. Accordingly, neither self-defense, nor the defense of others, "encompass[es] a preemptive strike." *State* v. *Lewis*, 220 Conn. 602, 620, 600 A.2d 1330 (1991).

Although § 53a-19 provides for two separate, but related, defenses—self-defense and defense of others—we have interpreted this provision consistently without regard to the specific type of claim asserted thereunder. For instance, after observing that, "[s]ubsection (a) [of § 53a-19], in setting forth the general rule when the use of force is justified, does not textually differentiate between self-defense and defense of others," we held that the exceptions applicable to self-defense claims, enumerated in § 53a-19 (c), apply with equal force to defense of others claims. *State* v. *Silveira*, 198 Conn. 454, 469, 503 A.2d 599 (1986). Similarly, the criminal jury instructions approved by the judicial branch provide a single set of instructions for use with both types of claims. State of Connecticut Judicial Branch, Criminal Jury Instructions (4th Ed. 2010) § 2.8-1, available at http://jud.ct.gov/ji/Criminal/Part2/2.8-1.htm (last visited February 6, 2013) (copy contained in the file of this case in the Supreme Court clerk's office). In light of the foregoing, and because this court has had far fewer occasions to consider defense of others claims under § 53a-19, we look to our precedents concerning the application of this section to self-defense claims to guide our resolution of this case.

"Under our Penal Code, self-defense . . . is a defense . . . rather than an affirmative defense. . . . Consequently, a defendant has no burden of persuasion for a claim of self-defense; he has only a burden of production. That is, he merely is required to introduce sufficient evidence to warrant presenting his claim of self-defense to the jury." (Internal quotation marks omitted.) *State* v. *Singleton*, supra, 292 Conn. 747. Put differently, the evidence adduced by the defendant "must be sufficient [if credited by the jury] to raise a reasonable doubt in the mind of a rational juror as to whether the defendant acted in self-defense." (Internal quotation marks omitted.) *State* v. *Edwards*, supra, 234 Conn. 388, quoting *State* v. *Carter*, 232 Conn. 537, 545, 656 A.2d 657 (1995). "This burden is slight, however, and may be satisfied if there is 'any foundation in the evidence [for the defendant's claim], no matter how weak or incredible . . . .' " *State* v. *Edwards*, supra, 388, quoting *State* v. *Carter*, supra, 546.

Importantly, the defendant's own testimony need not support the theory of defense on which he seeks to

have the jury instructed. Rather, the defendant "may rely on evidence adduced either by himself *or by the state* to meet this evidentiary threshold." (Emphasis added.) *State* v. *Nathan J.*, 294 Conn. 243, 262, 982 A.2d 1067 (2009). Indeed, once a defendant identifies sufficient evidence in the record to support a requested jury charge, he is entitled thereto as a matter of law, even if his own testimony, or another of his theories of defense, flatly contradicts the cited evidence. See, e.g., id. ("a defendant may be entitled to jury instructions reflecting inconsistent theories of defense *even if evidence presented by the defendant directly contradicts one of the theories of defense*" [emphasis added]); *State* v. *Person*, 236 Conn. 342, 350, 673 A.2d 463 (1996) ("no rule of law prevents a jury from being charged, when requested, on the defense of extreme emotional disturbance simply because the defendant has testified that he or she was not upset").

"An instruction on a legally recognized theory of defense, however, is warranted only if the evidence indicates the availability of that defense. . . . The trial court should not submit an issue to the jury that is unsupported by the facts in evidence." (Citations omitted.) *State* v. *Adams*, 225 Conn. 270, 283, 623 A.2d 42 (1993). "Although it is the jury's right to draw logical deductions and make reasonable inferences from the facts proven . . . it may not resort to mere conjecture and speculation." (Internal quotation marks omitted.) *Perez-Dickson* v. *Bridgeport*, 304 Conn. 483, 512, 43 A.3d 69 (2012). It follows that "[o]nly when [a defense] has been sufficiently raised does the state have the burden of disproving such defense beyond a reasonable doubt." (Internal quotation marks omitted.) *State* v. *Lewis*, supra, 220 Conn. 619.

Finally, in order to submit a defense of others defense to the jury, "a defendant must introduce evidence that the defendant reasonably believed [the attacker's] unlawful violence to be imminent or immediate. . . . Under . . . § 53a-19 (a), a person can, under appropriate circumstances, justifiably exercise repeated deadly force if he reasonably believes both that [the] attacker is using or about to use deadly force against [himself or a third person] and that deadly force is necessary to repel such attack. . . . The Connecticut test for the degree of force in self-defense [and the defense of others] is a subjective-objective one. The jury must view the situation from the perspective of the defendant. Section 53a-19 (a) requires, however, that the defendant's belief ultimately must be found to be reasonable." (Citation omitted; internal quotation marks omitted.) *State* v. *Edwards*, supra, 234 Conn. 389. "[I]n reviewing the trial court's rejection of the defendant's request for a jury charge on [defense of others], we . . . adopt the version of the facts most favorable to the defendant which the evidence would reasonably support." (Internal quotation marks omit-

ted.) Id.

Turning to the present case, we conclude that the trial court properly refused to instruct the jury on the defense of others. Adopting the version of the facts most favorable to the defendant, the jury could have concluded that the victim was a violent person who previously had threatened both Lawrence and the defendant on numerous occasions, had destroyed Lawrence's property and broken into her home, and had stabbed himself in front of her. Having witnessed personally or learned contemporaneously of these events, the defendant was aware of this history of violence, and both he and Lawrence testified that they feared the victim. Moreover, the jury could have credited the defendant's testimony that the victim brandished a gun and threatened to kill Lawrence just before he began walking toward the school building. This evidence, if credited, would have been more than sufficient for a reasonable jury to conclude that the defendant believed the victim represented a threat to Lawrence.

No evidence, however, supports the defendant's contention that *at the time he stabbed the victim*, it was *objectively reasonable* for him to believe that it was necessary to do so in order to defend Lawrence. Although the victim's and the defendant's testimony conflict regarding the direction in which each was traveling prior to the assault, both testified that the victim turned *away from* the school building—and thus, from Lawrence—upon the defendant's approach, and "turned around" to face the defendant. In the defendant's account, the victim attacked him and a struggle ensued on the sidewalk; the victim testified that he attempted to run away from the defendant, but no evidence suggests that he tried to run *toward Lawrence*.[6] Nor does the evidence reveal Lawrence's location within the building; it merely indicates that Lawrence was sufficiently far from the entrance that she learned of the assault only after it had occurred and the defendant had fled the scene. No evidence, then, would permit a reasonable jury to infer that the victim was "using or about to use deadly physical force" *against Lawrence* without resort to impermissible speculation. General Statutes § 53a-19 (a) (1); see also *State* v. *Lewis*, supra, 220 Conn. 620 (trial court's refusal to instruct on self-defense proper when only evidence that defendant was acting in self-defense was testimony of police officer that defendant seemed to fear victim, believed to be dangerous drug dealer, but no evidence suggested that "*at the time he killed the victim*, it was reasonable for [the defendant] to believe that the victim was about to use deadly physical force or inflict great bodily harm, and that it was necessary to kill the victim to prevent such conduct" [emphasis in original]); cf. *State* v. *Edwards*, supra, 234 Conn. 389–90 ("[g]iven the defendant's explanation of the manner in which *he was approached by the victim* and the victim's alleged fur-

tive movements *as he proceeded to within a few feet of the defendant*, we cannot, in the context of the other defense testimony, conclude that the evidence introduced at trial [would have required the jury] to resort to speculation that the defendant reasonably believed that [he] had to act in self-defense" [emphasis added; internal quotation marks omitted]).

As the state points out, on the basis of this evidence, "[t]he most that can be inferred is that Lawrence might have been endangered at some point in the future if [the victim were] able to locate her." Thus, even if the jury concluded that the defendant himself believed that the victim represented an imminent threat to Lawrence at the time the defendant stabbed the victim, no reasonable jury could find the defendant's belief to be objectively reasonable. Viewed in the light most favorable to the defendant, the evidence was insufficient to raise a reasonable doubt in the mind of a rational juror as to whether the defendant acted in Lawrence's defense. Accordingly, we hold that the trial court properly refused to instruct the jury as requested on the defendant's defense of others theory.[7]

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to affirm the judgment of the trial court.

In this opinion the other justices concurred.

* The listing of justices reflects their seniority status on this court as of the date of oral argument.

[1] General Statutes § 53a-19 (a) provides in relevant part that "a person is justified in using reasonable physical force upon another person to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force, and he may use such degree of force which he reasonably believes to be necessary for such purpose; except that deadly physical force may not be used unless the actor reasonably believes that such other person is (1) using or about to use deadly physical force, or (2) inflicting or about to inflict great bodily harm."

[2] General Statutes § 53a-59 (a) provides in relevant part: "A person is guilty of assault in the first degree when . . . (1) With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument . . . ."

[3] General Statutes § 53a-49 (a) provides: "A person is guilty of an attempt to commit a crime if, acting with the kind of mental state required for commission of the crime, he: (1) Intentionally engages in conduct which would constitute the crime if attendant circumstances were as he believes them to be; or (2) intentionally does or omits to do anything which, under the circumstances as he believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime."

[4] In particular, Lawrence testified that she slept with the lights on and would wake up in the middle of the night to be certain her bedroom door was locked. On some nights, the defendant watched Lawrence sleep via her "web cam."

[5] General Statutes § 53a-12 (a) provides: "When a defense other than an affirmative defense, is raised at a trial, the state shall have the burden of disproving such defense beyond a reasonable doubt."

[6] Specifically, the victim testified as follows when questioned by the prosecutor:

"Q. You say you're approaching the door, after you've had a discussion with [the defendant] . . . then you left, then you come back; at some point you're approaching the door of the building of [the school], correct?

"A. Right.

"Q. As you're approaching the door, what occurs?

"A. I was about halfway up to the door—I passed the [driveway] almost halfway and I heard someone coming behind me. *I turned* and it was like two feet, it was [the defendant].

"Q. Two feet in front of you?

"A. Yes, *I turned* and *when I turned* he had the knife in his right hand so when I saw the knife, I tried to just run away before I made it, he just went like this and stabbed me in my left chest." (Emphasis added.)

The defendant, when questioned by defense counsel, testified consistently with the victim regarding the victim's turning around near the door of the school:

"Q. Okay, so you followed [the victim] to the front door [of the building] and then tell us what happened?

"A. No, he had gone before me.

"Q. Correct. You're proceeding to the front door.

"A. Yeah. So I was proceeding to the front door and [as] I arrived at the front door he was coming out.

"Q. He had entered the building?

"A. Yes, sir. He entered the building.

"Q. And you got to the front door.

"A. Yes, sir.

"Q. And did you just say that he came back out?

"A. *He turned around*. When I was going to the door he was coming out at the same time." (Emphasis added.)

[7] Because our holding is grounded in the uncontroverted evidence in the record demonstrating that the victim was moving *away from* the school building at the time of the assault, we decline to address the state's argument that Lawrence could not have been subject to an imminent attack because she was inside the school building at the time of the stabbing.

Similarly, because we conclude that the trial court's refusal to instruct the jury was proper, we need not consider the state's argument that the decision of the trial court may be upheld on the alternate ground of harmless error.