No. 101179 -- State of West Virginia v. Rhonda K. Stewart

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OF WEST VIRGINIA

WORKMAN, C.J., concurring:

"[I]t is well established in our system of jurisprudence that regardless of a criminal defendant's status in life or the probability of guilt, he is entitled to a fair trial in accordance with the existing rules and principles of law." *State v. Kanney*, 169 W. Va. 764, 766, 289 S.E.2d 485, 487 (1982).

I write separately to emphasize one overriding point: Despite the bombast employed in the two dissenting opinions, the majority opinion in this case does nothing more than apply this Court's existing prior precedent. Quite simply, this Court has long recognized the existence of Battered Woman's Syndrome,[1] and has permitted defendants accused of killing their domestic partners to introduce evidence tending to show that they meet the profile of a battered woman. In a footnote in *State v. Riley*, 201 W. Va. 708, 500 S.E.2d 524 (1997), the Court summarized the law in this area:

> Evidence of battered spouse syndrome has been found to be admissible for a criminal defendant in West Virginia for any of three purposes. First, it can be used to determine the defendant's mental state where self-defense is asserted. *See State v. Dozier,* 163 W. Va. 192, 197-98, 255 S.E.2d 552, 555

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[1]While the majority's use of the phrase "Battered Woman's Syndrome" is based upon well-established literature and case law, the concept should not, in any way, be limited in its application to women, but should be applied equally to all domestic partners.

> (1979). Second, it can be used to negate criminal intent. *See State v. Lambert,* 173 W. Va. 60, 63-64, 312 S.E.2d 31, 35 (1984). Finally, in *State v. Wyatt,* 198 W. Va. 530, 482 S.E.2d 147 (1996), we discussed the potential use of the battered spouse syndrome "to establish either the lack of malice, intention, or awareness, and thus negate or tend to negate a necessary element of one or the other offenses charged." *Id.* at 542, 482 S.E.2d at 147, 159.

201 W. Va. at 714 n. 6, 500 S.E.2d at 530 n. 6.

The discussion in *Riley,* however, was rather cryptic, and was neither expounded upon nor elevated to the syllabus. *Id.* at 714 However, in 2009, this Court, *including one of the current dissenting members*, explicitly held that such evidence is admissible in non-self-defense cases to negate a necessary element of the offense charged, such as malice or intent. In *State v. Harden*, 223 W. Va. 796, 679 S.E.2d 628 (2009), a defendant accused of murdering her husband sought to present evidence that she had been abused by her husband throughout the course of their marriage, arguing that such evidence was relevant to her state of mind at the time of the death. This Court held in *Harden* that, under our then-existing precedent, she was entitled to present such evidence to the jury, and the circuit court clearly erred in barring her from doing so. Then, in syllabus point four of *Harden*, the Court held: "Where it is determined that the defendant's actions were not reasonably made in self-defense, evidence that the decedent had abused or threatened the life of the defendant is nonetheless relevant and may negate or tend to negate a necessary element of the offense(s) charged, such as malice or intent." 223 W. Va. at 799, 679 S.E.2d at 631,

Syl. Pt. 4. Thus, the Court clarified in a syllabus point that evidence of Battered Woman's Syndrome can be relevant *and is admissible* even in non-self-defense cases.

Factual Misrepresentations

Not only do the dissents fail to follow the law, they also grossly misrepresent the facts of this case. First, both state that the defendant had not been abused by her husband for the last fifteen years or longer. This is completely unsupported in the record. The dissents base these misleading statements on contentions made by the prosecution in a pre-trial hearing; even though these contentions were vehemently disputed by the defense. In fact, there is *almost no evidence* in the record relating to the domestic abuse, because the trial judge excluded the defendant's witnesses who were prepared to testify about that abuse.[2] For the dissenting justices to rely on mere assertions of the prosecution (which were hotly disputed) is confounding and gravely misleading.

Furthermore, the dissents state ***as a fact***, that the defendant shot her husband as a result of learning that he intended to divorce her. Justice Davis goes so far as to state that the defendant "informed the jury that she murdered her husband, not because of domestic violence, but because she was 'devastated' to know that he planned to divorce her." Again,

[2]It is ironic that the Benjamin dissent bases its conclusion, in part, on the statement that "there is no evidence in the record that Stewart was abused . . . ." Obviously, the reason that there was no such evidence is that the defense was precluded from offering it.

such assertions are baseless and completely unsupported by the record. The fact is that the defendant never stated that she believed her husband planned to divorce her; rather, the dissents have drawn an inference to meet their own needs, and are disingenuous in order to craft more persuasive dissenting opinions.

Despite the factual inaccuracies in the dissents, the facts of the instant case are not really the crux of the issue. The real issue before the Court is the application of this State's existing law to the facts. When existing law is fairly applied, the result that is reached by the majority --- the reversal and remand for a new trial --- is the correct outcome.

Historical/Legal Background

By way of historical background, numerous medical and academic studies have led courts across this nation to conclude over the last few decades that a person who has been made to suffer domestic abuse – be that person a wife, a husband, a child, or a parent – can develop emotional instability and "react" to situations in a manner that we as a society would not expect of an "ordinary reasonable person." In many instances, the abused person's "reaction" manifests in the form of an injury to the person or property of their abuser, resulting in the levying of criminal charges against the abused person – sometimes very serious criminal charges. A recurring issue before this Court in reviewing criminal cases of that genre has been the relevance and admissibility of a defendant's history of abuse.

The Davis dissent, however, finding the result of such application of existing law to the instant case not a pleasant task, now takes the position (inconsistent with her opinion in *Harden* and contradictory to a long body of West Virginia law) that she only supports "the prior decisions of this Court holding that an expert may provide evidence on the battered woman's syndrome when a defendant asserts self-defense in a homicide prosecution." In *Harden,* however, the dissenting justice was in the majority that held clearly in syllabus point four that "[w]here it is determined that the defendant's actions were not reasonably made in self-defense, evidence that the decedent had abused or threatened the life of the defendant is nonetheless relevant and may negate or tend to negate a necessary element of the offense(s) charged, such as malice or intent." 223 W. Va. at 799, 679 S.E.2d at 631, Syl. Pt. 4.

West Virginia has been on the forefront of permitting defendants to introduce evidence of abuse occurring within a domestic relationship for more than thirty-two years. *See Dozier*, 163 W. Va. at 197-98, 255 S.E.2d at 555. We were one of the first Courts in the nation to embrace the modern scientific understanding that chronically abused persons may behave "irrationally." We emphasize "irrationally" because that term is typically measured by, or in comparison to, the judicial standard of an "ordinary reasonable person." It is clear, however, that what is rational to an "ordinary abused person" – particularly a person who has endured abuse to the extent that they meet the requisite profile of Battered Woman's

Syndrome – is not the same as for someone who has not been abused.

The Majority Decision

The instant case brings a factual scenario before the Court that is factually apposite and legally consistent with the clearly enunciated language of syllabus point four in *Harden*, as well as other prior case law in this State, insofar as it involves a defendant who seeks to introduce evidence that "the decedent had abused or threatened" her life to negate a necessary element of the charge of first degree murder. The outcome of the application may be uncomfortable given the unpleasant and dramatic facts of this case; however, existing West Virginia law permits this defendant to introduce evidence of battered woman's syndrome to negate an element of the crime with which she was charged. That is all the defendant was attempting to do.

Not a New Defense

It should be made very clear, however, that contrary to the Davis dissent, the majority opinion does not create a new or novel "stand alone affirmative defense" based upon Battered Women's Syndrome. The relevance of a defendant's history of abuse, and evidence that a defendant meets the profile of a person with Battered Woman's Syndrome, is admissible in the instant factual context for the limited purpose of explaining to the jury the defendant's history of abuse and how that abuse may have affected the defendant's

reasoning at the time of an alleged criminal act, thereby negating, or tending to negate, an essential element of the prosecution's case. *Harden*, 223 W. Va. at 799, 679 S.E.2d at 631, Syl. Pt. 4.

One of the most basic arguments a criminal defendant may raise is that the prosecution has failed to establish one of the essential elements of the crime. Here, the majority opinion simply reiterates that a defendant has the right to present evidence in an attempt to persuade a jury that one of the essential elements, such as motive, intent or premeditation, has not been proven beyond a reasonable doubt. The relevance of evidence that the defendant meets the psychological profile of Battered Woman's Syndrome is that a defendant arguably did not have the requisite mens rea to be convicted of the crime charged as a result of the changes to her psyche caused by years of domestic abuse. Since the defendant did not assert self-defense, all she can use the Battered Woman's Syndrome evidence for is to explain her state of mind, so that a jury of her peers can determine whether she had the requisite intent to have committed first degree murder; or whether she is instead guilty of a lesser degree of murder. Thus, it is completely inaccurate that the defendant as a result of the majority opinion will escape punishment.

In summary, the dissenting opinions would have this Court ignore longstanding precedent and to stray from our prior jurisprudence. As the Supreme Court of the United

States stated:

> The Court has said often and with great emphasis that "the doctrine of stare decisis is of fundamental importance to the rule of law." *Welch v. Texas Dept. of Highways and Public Transportation*, 483 U.S. 468, 494, 107 S.Ct. 2941, 2957, 97 L.Ed.2d 389 (1987). Although we have cautioned that "stare decisis is a principle of policy and not a mechanical formula of adherence to the latest decision," *Boys Markets, Inc. v. Retail Clerks*, 398 U.S. 235, 241, 90 S.Ct. 1583, 1587, 26 L.Ed.2d 199 (1970), it is indisputable that stare decisis is a basic self-governing principle within the Judicial Branch, which is entrusted with the sensitive and difficult task of fashioning and preserving a jurisprudential system that is not based upon "an arbitrary discretion." The Federalist, No. 78, p. 490 (H. Lodge ed. 1888) (A.Hamilton). *See also Vasquez v. Hillery*, 474 U.S. 254, 265, 106 S.Ct. 617, 624, 88 L.Ed.2d 598 (1986) (stare decisis ensures that "the law will not merely change erratically" and "permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals").

Patterson v. McLean Credit Union, 491 U.S. 164, 172, 109 S.Ct. 2363, 105 L.Ed.2d 132 (1989), *superceded in part on other grounds by* the Civil Rights Act of 1991. The Supreme Court further explained that: "any departure from the doctrine of stare decisis demands special justification." *Arizona v. Rumsey*, 467 U.S. 203, 212, 104 S.Ct. 2305, 2311, 81 L.Ed.2d 164 (1984).

Further, it is a bedrock principle of our legal system that the law must be applied fairly, consistently, and even-handedly. As judges, we cannot pick and choose which defendants we find more sympathetic and afford them greater rights than those we find

particularly unsympathetic. When courts are faced with making difficult and sometimes unpopular decisions in light of hard factual situations, they cannot change the law to conform to the whim of the day. Judicial decisions are entitled to great weight and courts cannot selectively apply the law based upon the facts of a particular case. Upon a thorough review of the facts and existing law, there is no sound basis to depart from our existing law.