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IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Criminal Division--Felony Branch

UNITED STATES : Docket No. 2011 CF1 15572
: :
v. : Judge Morin
: :
DOMINIQUE BASSIL : Sentencing: January 18, 2012

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION
2012 NOV 21 P 2:32
FILED

MOTION FOR POST-VERDICT JUDGMENT OF ACQUITTAL AND MEMORANDUM OF LAW IN SUPPORT THEREOF

Defendant, Dominique Bassil, through counsel, respectfully submits the following memorandum in support of her Motion for Judgment of Acquittal, made at the conclusion of the defense case. Superior Court Rule of Criminal Procedure 29(a) authorizes defense counsel to move for judgment of acquittal at the close of the government's case and at the end of the defense case.

The standard for granting a motion for judgment of acquittal is set forth in Curley v. United States, 81 U.S.App.D.C. 389, 160 F.2d 229, cert. denied, 331 U.S. 837 (1947). As stated in Curley, a trial judge in ruling on a motion for judgment of acquittal:

[m]ust determine whether upon the evidence giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact, a reasonable mind might fairly conclude guilt beyond a reasonable doubt. . . . [I]f there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt, the motion must be granted.

Id. at 392-93, 160 F.2nd at 232-33. In other words, a motion for judgment of acquittal "must be granted when the evidence, viewed in the light most favorable to the government, is such that a reasonable juror must have a reasonable doubt as to the existence of any of the essential elements of the crime." Austin v. United States, 127 U.S.App.D.C. 180, 189, 383 F.2d 129, 138 (1967) (footnote omitted).

There is insufficient evidence against Ms. Bassil to support the charge of second degree murder while armed. Although the government need not introduce evidence which compels a finding of guilt, Crawford v. United States, 126 U.S. App. D.C. 156, 375 F.2d 332 (1967), the evidence must establish more than a mere suspicion of the defendant's guilt. "[T]he judge must not allow the jury to speculate guilt without evidence or to stray into pure surmise, bias or prejudice." Cooper v. United States, 94 U.S. App. D.C. 343, 345, 218 F.2d 39, 41 (1954).

Accordingly, this case can only survive a motion for judgment of acquittal if the government has presented evidence from which this Court could find beyond a reasonable doubt that Ms. Bassil is guilty of offense charged. Undersigned counsel made an oral motion for judgment of acquittal at the conclusion of the defense case. This Court reserved its ruling. On November 9, 2012 a jury convicted Ms. Bassil of second degree murder while armed. Accordingly, Ms. Bassil asks that this Court grant her motion.

In order to prove that Dominique Bassil second degree murder the government must prove that 1) Ms. Bassil caused the death of Mr. Harris 2) That at the time she did so, Ms. Bassil intended to kill or seriously injure Mr. Harris, or acted in a conscious disregard of an extreme risk of death or serious bodily injury to Mr. Harris, 3) there were no mitigating circumstances; and 4) Ms. Bassil did not act in self-defense. See Criminal Jury Instructions for the District of Columbia, Instruction 4.202.

NO REASONABLE JUROR COULD FIND THAT DOMINIQUE BASSIL IS GUILTY OF SECOND DEGREE MURDER WHILE ARMED.

The government did not prove beyond a reasonable doubt that Dominique Bassil did not act in self defense when she stabbed the decedent Vance Harris. Viewing the evidence in the light most favorable to the government Dominique Bassil cannot be found guilty beyond a reasonable doubt of second degree murder while armed. The evidence at trial did not prove beyond a

reasonable doubt that Ms. Bassil did not act in self defense when she stabbed Vance Harris on August 13, 2010. The government failed to meet its burden and Ms. Bassil must be found not guilty of second degree murder while armed. Ms. Bassil's account of the events in her apartment leading up to the stabbing was corroborated and her statement was unimpeached.

Evidence of the nature of Mr. Harris and Ms. Bassil's relationship did not prove beyond a reasonable doubt that Ms. Bassil did not act in self-defense when she stabbed Mr. Harris.

At trial the government presented lengthy evidence regarding Ms. Bassil and Mr. Harris' relationship prior to the day Ms. Bassil stabbed Mr. Harris. However, none of that evidence rebutted Ms. Bassil's account of what happened inside her apartment on the night of Mr. Harris' death. The fact that Ms. Bassil and Mr. Harris had an unstable relationship in no way rebutted or undermined Ms. Bassil's statement of the events on the night Mr. Harris died. The government's evidence of events prior to the decedent and Ms. Bassil returning to her home that night in no way discredited Ms. Bassil's account of what occurred immediately before the stabbing.

The government presented evidence regarding Mr. Harris and Ms. Bassil's communication via text messaging, introduced evidence of Mr. Harris' infidelities, and introduced evidence of the couple's phone call communications. While this evidence established the strained nature of the relationship and Ms. Bassil's displeasure with Mr. Harris' conduct in the relationship, it in no way undermined Ms. Bassil's account of what happened inside her apartment when Mr. Harris assaulted her and she stabbed him in self-defense.

The wedding

The government also presented evidence of Ms. Bassil's alleged conduct at the wedding she and Mr. Harris attended prior to the incident. Even crediting the government's witnesses this evidence does not disprove Ms. Bassil's account of what happened at her apartment when Mr. Harris assaulted her. In fact, if the government's witnesses were to be believed, Ms. Bassil's behavior at the wedding provided the decedent with a motive to assault Ms. Bassil. The

witnesses testified that Ms. Bassil slapped Mr. Harris in the face on one occasion and “mushed” i.e. pushed the side of his head with the palm of her hand, on another occasion. The evidence also showed Mr. Harris was drunk when he left the wedding.

Contact with the police in Prince Georges County

The evidence confirmed Ms. Bassil’s statement to the police that she and Mr. Harris had contact with police officers in Prince Georges County on their way home from the wedding. The decedent’s torn jacket that was introduced into evidence was more physical evidence corroborating Ms. Bassil’s account of a physical assault by Mr. Harris on the street in Prince Georges County that lead to the contact with the police there. This police stop was corroboration of Ms. Bassil’s statement that Mr. Harris was angry because he felt Ms. Bassil almost got him arrested that night. In fact the evidence showed that Mr. Harris had a gun and ammunition in his vehicle during this stop that he had no legal authority to be transporting at that time. This was further motive of Mr. Harris to be angry and assault Ms. Bassil.

Ms. Bassil’s statement to the police on the scene

Ms. Bassil’s statement to numerous law enforcement agents was introduced at trial. The first person Ms. Bassil reported the stabbing to was Edwin Lewis the security officer at her complex. Mr. Lewis described Ms. Bassil as hysterical and scared. She was naked except for underpants and a hair bonnet. According to government witness Mr. Lewis, Ms. Bassil immediately informed him that her boyfriend had been beating her and that she stabbed him to defend herself. In addition to Mr. Lewis’ testimony at trial, the 911 call he made to the police that night was introduced into evidence and in that call Ms. Bassil can clearly be heard. She is crying and her stating that her boyfriend was beating her. Ms. Bassil’s hysteria coupled with the fact that her report to Mr. Lewis was immediately after the stabbing go to the credibility of her words and the genuineness of her fear.

The government also introduced Officer Bowman and Officer Jewell. Officer Bowman

was the first Metropolitan Police Officer to speak with Ms. Bassil after the stabbing. Ms. Bassil once again reported that her boyfriend had been beating her before she stabbed him in an effort to protect herself. Ms. Bassil was questioned multiple times by Officer Bowman and her account remained consistent. She provided Officer Bowman with additional details of the incident. Ms. Bassil stated to Officer Bowman that Vance Harris had hit her in the face repeatedly, dragged her off her bed by her feet, and that she had gone into her kitchen to get away. She stated that Mr. Harris followed her and she picked up a knife to defend herself. At which time Mr. Harris continued to come at her. Ms. Bassil believed Mr. Harris was coming at her to continue the beating and she stabbed Mr. Harris in self defense. Office Jewell testified that he was with Officer Bowman in a secondary capacity when Office Bowman interviewed Ms. Bassil and he also heard Ms. Bassil state that Mr. Harris was beating her and she stabbed him in an attempt to defend herself.

Ms. Bassil's videotaped statement to the police at the homicide office

The government introduced Ms. Bassil's statement to the police at homicide which was taken within a few hours of the incident. Ms. Bassil once again provided an account of the event that was consistent with her statement to Officer Lewis and Officers Bowman and Jewell. Ms. Bassil provided additional details but never contradicted any of her previous account that Mr. Harris had been beating her and that she stabbed him in an attempt to defend herself from his attack. The evidence at trial showed that Mr. Harris was 6'8" or 6'9" tall and weighed over 250 pounds. Ms. Bassil's statement to the police was that after Mr. Harris had slapped her in the bedroom while on top of her in her bed he dragged her from her bed by her feet. Ms. Bassil hit Mr. Harris with a boot that she found on the floor in her room and ran to her kitchen. Mr. Harris followed Ms. Bassil and she picked up a knife and told him to stop beating her. Mr. Harris then continued to come at Ms. Bassil and when he lunged at her she stabbed him twice.

Testimony of Ms. Bassil's neighbors

The government introduced no evidence that contradicted or discredited Ms. Bassil's account of what happened in her apartment the night of the incident. The government introduced witnesses who said they heard no arguing from the apartment however Ms. Bassil never stated that she and Mr. Harris were in a loud argument. Nor did Ms. Bassil ever state she screamed or made any other loud calls during the attack by Mr. Harris.

The physical evidence

The physical evidence in the apartment corroborated Ms. Bassil's account. Her bed mattress was pulled askew from the box spring and the bed covers were pulled in a manner consistent with her having been pulled off the bed by Mr. Harris as she described to the police immediately after the incident. A boot was found near the location where Ms. Bassil stated she confronted Mr. Harris with the knife after she dropped it. The physical evidence also supports Ms. Bassil's account of how Mr. Harris grabbed a kitchen knife after she stabbed him. The location of the blood is also consistent with Ms. Bassil's account. The knife Ms. Bassil described and told the police she used in the stabbing was found in a trash can. Ms. Bassil admitted in her police interrogation that she had dropped the knife but could not recall where or when she dropped it.

It is important to consider that Ms. Bassil gave a statement to the police of what happened in that apartment that night without ever having seen how the physical evidence of the scene corroborated her statement. This is strong evidence of her truthfulness. Everything Ms. Bassil described ultimately proved to be accurate when the police investigated the scene inside her apartment. There was no evidence at trial that any of the events that Ms. Bassil describes having occurred inside the apartment was not completely true.

The decedent's prior violence

The defense also presented uncontroverted evidence that Mr. Harris had physically

assaulted a customer at one of his previous job sites demonstrating that Mr. Harris had the character and potential to assault a woman. Ms. Bassil also testified at trial that Mr. Harris had punched her on the arm once before and that developed a bruise from that punch. Cassandra McCoy testified that she observed a bruise at some point after this on Ms. Bassil's arm. This evidence undercut the government's attempt to characterize the decedent as a gentle giant and a man who would not physically assault a woman.

Injuries

Finally, the evidence demonstrated that Ms. Bassil had no visible injuries after her assault. However, the emergency room doctor called by the government clearly stated that slaps to the face may not produce bruising. He also testified that the time it takes for bruises to become visible varies by individual. He testified that redness can result from slaps to the face but on a darker skinned person (such as Ms. Bassil) that redness may not be visible. He further testified that whether or not bruising resulted from a hit would depend on the amount of fat and soft tissue between the skin and the bone. Given the fact that Ms. Bassil was slapped on her cheeks there was no medical evidence presented by the government to demonstrate that she would have visible injuries. In addition, video footage of Ms. Bassil's police interview that was introduced at trial demonstrated that Ms. Bassil was suffering from back pain and pain all over her body. The back pain was reported to the emergency room doctor and was consistent with her account of struggling against Mr. Harris as he pinned her to the bed and being dragged by her feet off her bed by Mr. Harris.

Conclusion

In conclusion, the government presented no evidence to disprove Ms. Bassil's account of what occurred in her apartment the night she stabbed Mr. Harris. The government attempted to impeach Ms. Bassil but failed and her trial testimony was consistent with her statement to the police shortly after the incident. While government counsel attempted to pull out excerpts of Ms.

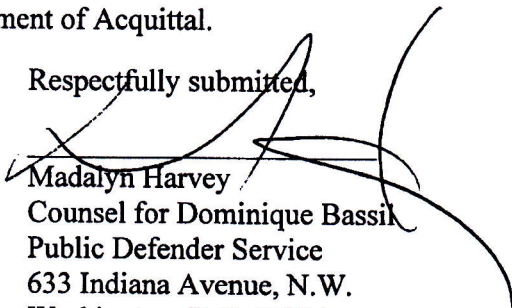
Bassil's statement to imply she was inconsistent her recorded statement speaks for itself and demonstrated that she provided a consistent statement of the events and those events were supported by the physical evidence in this case.

The government failed to meet its burden to prove beyond a reasonable doubt that Ms. Bassil did not act in self-defense. The government failed to prove that Ms. Bassil did not have a reasonable belief under the circumstances as they existed at the time that she was in imminent danger of serious bodily harm.

The critical issue in this case was whether or not Ms. Bassil believed at the time she stabbed Mr. Harris that she was in danger of being killed by Mr. Harris or believed she would likely suffer serious bodily harm at his hands. The evidence at trial, even viewed in the light most favorable to the government, is insufficient to prove that Ms. Bassil did not act in self-defense when she stabbed the decedent. It is the government's burden to prove its case beyond a reasonable doubt that the offense occurred and it cannot rely on unsupported assumptions. The government did not meet its burden and Ms. Bassil must be acquitted of the charge of second degree murder while armed because the government did not prove beyond a reasonable doubt that she did not act in self-defense.

WHEREFORE, for the reasons presented above, Dominique Bassil, respectfully requests that this Court grant her Motion for Judgment of Acquittal.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been by email on Michelle Jackson, Assistant United States Attorney, Office of the United States Attorney, 555 Fourth Street, N.W., Washington, D.C. 20001 this 21st day of November, 2012.


Madalyn Harvey