

ORIGINAL

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION - FELONY BRANCH

2012 DEC -4 P 2:32
UNITED STATES OF AMERICA : Case No: 2011CF1015572

v.

FILED

DOMINIQUE BASSIL

: The Honorable Robert Morin

Defendant.

:
:
:
: Sentencing: January 18, 2012

**GOVERNMENT'S OPPOSITION TO DEFENSE MOTION FOR POST-VERDICT
JUDGMENT OF ACQUITTAL AND MEMORANDUM OF LAW IN SUPPORT
THEREOF**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully opposes the defense motion for post-verdict judgment of acquittal and memorandum of law in support thereof. The court must deny the defense motion because following the government's case-in-chief, the court denied the defense motion for judgment of acquittal and the defense case-in-chief did not undermine any element of second-degree murder while armed. Rather, the defense case was 1) cumulative of the government's evidence and 2) merely provided an alternate theory of the evidence which the jury did not credit.

ARGUMENT

In evaluating a post-verdict judgment of acquittal, the court must apply the same standard when a motion for judgment of acquittal is made at trial. *United States v. Hubbard*, 429 A.2d 1334, 1338 (D.C. 1981). "In considering the motion, the evidence must be viewed in the light most favorable to the government, giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact." *Id.* at 1337-1338. (citations and internal quotations omitted). Where a reasonable person could find guilt beyond a reasonable doubt, such as the twelve jurors who found defendant Dominique Bassil guilty beyond a reasonable doubt, a

motion for judgment of acquittal must be denied. *Id.* at 1337.

Following the Government's case-in-chief, the defense orally moved for a judgment of acquittal. The court viewed the evidence in the light most favorable to the government and denied the defense motion. Afterwards, the defense presented evidence in its case-in-chief. The defense presented the testimony of Capitol Heights police Barry Shirriel, the defendant's sister, Denise Coss, defense investigators who admitted the wedding DVDs and decedent's tuxedo and provided an audit of all the ammunition found inside the defendant's apartment, a stipulation concerning the decedent's carrying of a pistol for employment purposes, and the defendant. The defense case-in-chief can best be described as cumulative of the government's case and providing an alternate theory for the defendant killing Vance Harris. The evidence presented by the defense was insufficient to undermine the government's evidence and the court's earlier ruling

I. Cumulative Evidence of the Government's Case Does Not Provide A Basis To Grant a Motion for Judgment of Acquittal.

Testimony from Barry Shirriel and the testimony of the defense investigators were cumulative of the government's case. Barry Shirriel was consistent with the testimony of his partner former Capitol Heights police officer Matthew Van Dyke. Barry Shirriel corroborated that the defendant had no injuries and her clothes were not torn when they came upon them on Central Avenue. He further testified that Vance Harris was on the scene and he observed that Mr. Harris's tuxedo was torn. Mr. Shirriel also testified that the defendant told him that she was tired of arguing, fussing, and fighting with the decedent, or words to that effect. During his interaction with the defendant, the defendant did not allege that the decedent had assaulted her.

The admission of the wedding DVDs were cumulative of the government's evidence. In the government's case in chief, a portion of the DVD was played for witness Curtis Mitchell who

testified that the portion depicted how the decedent danced with others and ignored the defendant at the reception. Curtis Mitchell and Norman Forrest both testified that at the end of the reception, the decedent did dance with the defendant. On cross-examination, the defense investigator stated that the entire reception was not depicted on the wedding DVDs. He further testified that the DVDs depicted the decedent dancing with others.

Next, the introduction into evidence of the decedent's torn tuxedo and the ammunition did not undermine any element of second-degree murder while armed which the government had to prove beyond a reasonable doubt. The torn tuxedo was cumulative of former Capitol Heights officer Matthew Van Dyke who testified that at the conclusion of his meeting with the decedent and the defendant that he observed that the back of the decedent's tuxedo was torn. The introduction of the physical ammunition was cumulative of Technicians McCollum and Ramadhan who provided testimony in the government's case-in-chief, on both direct and cross examination, regarding the firearms evidence recovered inside the decedent's vehicle as well as inside the defendant's home.

Since this evidence was cumulative of the government's evidence, it cannot be a basis for the court to find that viewing the evidence in the light most favorable to the government that a reasonable person could not find beyond a reasonable doubt that the defendant was guilty. Since the evidence was cumulative, it did not undermine any element of second-degree murder while armed. Indeed, the evidence was corroborative of the government's case and bolstered the credibility of several government witnesses.

II. The Defense Case-In-Chief Provided an Alternate Theory for the Defendant Killing the Decedent which is a Credibility and Reasonable Inference Determination For a Jury to Decide.

The remaining evidence offered in the defense case-in-chief provided an alternate theory for the defendant stabbing and killing the decedent. The crux of the defense theory was that the

defendant acted in self-defense when she stabbed the decedent who assaulted her. The defense argued that the decedent was upset that the defendant could have gotten him arrested if the Capitol Heights police officers had found his firearm that was stored in a lockbox inside his vehicle. The jury did not accept the defense's alternate theory, so the defense now moves this court to dismiss the jury's verdict and acquit the defendant.

Simply put, the defense motion for judgment of acquittal is a request for the court to credit the defendant's version of how the decedent was stabbed and killed and accept the defense's inferences from the circumstantial evidence. The defense motion is evidence of this as it is replete with credibility references and arguments. ("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." Def. Mot. 3, ¶1; "Evidence does not disprove Ms. Bassil's account of what happened." Def. Mot. 3, ¶ 3; "The police stop was corroboration of Ms. Bassil's statement." Def. Mot. 4, ¶ 1; "Ms. Bassil's hysteria. . . go to the credibility of her words and genuineness of fear." Def. Mot. 4, ¶ 2; "Ms. Bassil provided additional details but never contradicted any of her previous account." Def. Mot. 5, ¶ 1; "The government introduced no evidence that contradicted or discredited Ms. Bassil's account." Def. Mot. 6, ¶ 1; "There was no evidence at trial that any of the events that Ms. Bassil describes having occurred inside the apartment was not completely true." Def. Mot. 6, ¶ 3; "This evidence undercut the government's attempt to characterize the decedent as a gentle giant." Def. Mot. 6, ¶ 4; "The back pain was reported to the emergency room doctor and was consistent with her account." Def Mot. 7, ¶1; "In conclusion, the government presented no evidence to disprove Ms. Bassil's account." Def. Mot. 7, ¶ 2.)

Alternate theories fall in the categories of credibility determinations and reasonable inferences that may be drawn from the evidence. Credibility determinations and reasonable

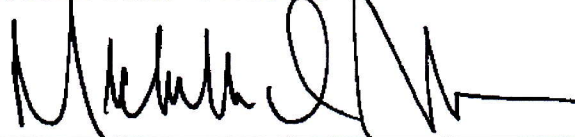
inferences based on the evidence are within the province of the jury. In considering a motion for judgment of acquittal, "the evidence must be viewed in the light most favorable to the government, giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact." *Hubbard* at 1337-1338. (citations and internal quotations omitted).

In this case, the jury heard the defendant's accounts to law enforcement and at trial of what occurred inside her apartment the night the decedent was killed. The same jury was provided the defense's alternate theory of the decedent being upset about the possibility of arrest by the Capitol Heights police officers. The jury also heard the defense argue in its closing, inferences to be drawn from the evidence, including testimony offered by the Denise Coss and Cassandra McCoy. Notwithstanding, the jury found the defendant guilty of second-degree murder, clearly dismissing the defendant's accounts of the events, not accepting the defense theory, and failing to be persuaded by the defense argument.

WHEREFORE the defendant's motion for a judgment of acquittal should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was be served via electronic mail upon the attorney for the defendant, Madalyn Harvey, Esq., Public Defender Service, 633 Indiana Avenue, NW, Washington, DC 20001 on this 4th day of December 2012.

