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***Smith v. State*: The Georgia Supreme Court Mandated Jury Instructions in Battered Person Syndrome Cases**

After a recent Georgia Supreme Court ruling, battered person syndrome¹ is entitled to separate jury charges when the defendant properly establishes the battered person syndrome self-defense claim.²

I. FACTUAL BACKGROUND

In *Smith v. State*,³ defendant Vernita Smith was convicted of voluntary manslaughter for shooting her husband.⁴ Defendant testified that her husband repeatedly beat her during their marriage. He held a gun to her head and threatened to kill her and take her child. He once choked her until she lost consciousness. On another occasion, he wrapped a lamp cord around her neck and stopped choking her only when her brother pulled him away. Defendant called the police a dozen times and left her husband twice. However, she returned each time after he apologized. Several witnesses corroborated defendant's abuse. On the day of the shooting, the husband became angry and struck defendant in the face. He then continued to hit her and held a metal can over his head in a threatening way. She grabbed a pistol and shot him. The bullet entered his arm and lodged in his chest. The husband ran out of the house and defendant followed.⁵ Defendant offered to get

1. The court has recognized that battered person syndrome evidence may be offered to show that men as well as women or children can suffer from the syndrome. *Smith v. State*, 268 Ga. 196, 198 n.3, 486 S.E.2d 819, 822 n.3 (1997). The syndrome is defined as "a series of common characteristics that appear in women [and men] who are physically and psychologically abused over an extended period of time by their mate or a dominant . . . figure in their lives." *Id.* at 198 n.2, 486 S.E.2d at 822 n.2 (citing *Johnson v. State*, 266 Ga. 624, 626, 469 S.E.2d 152, 154 (1996); *Selman v. State*, 267 Ga. 198, 200, 475 S.E.2d 892, 894 (1996)).

2. *Id.* at 200, 486 S.E.2d at 823.

3. 268 Ga. 196, 486 S.E.2d 819 (1997).

4. *Id.* at 196, 486 S.E.2d at 820.

5. *Id.* at 196-97, 486 S.E.2d at 820-21.

him medical help, and the husband replied, "Bitch, you're dead."⁶ The husband died later as a result of the shot.⁷

Defendant was convicted of manslaughter in the Superior Court of Baldwin County.⁸ At the trial, an expert in domestic violence testified on behalf of defendant on the symptoms of battered person syndrome.⁹ The expert determined that defendant exhibited the symptoms of battered person syndrome and therefore suffered from the syndrome.¹⁰ Defendant requested three separate jury charges relating to the battered person syndrome.¹¹ The court allowed defense counsel to explain in its closing argument how defendant's experience as a battered woman affected her state of mind at the time of the shooting.¹² However, defendant's proposed jury instructions were rejected.¹³

The trial court, against defendant's request, charged the jury on both murder and manslaughter using the pattern instructions on justification given in section 16-3-21(a) of the Official Code of Georgia Annotated ("O.C.G.A.").¹⁴ The Georgia Court of Appeals, unable to reverse the

6. *Id.* at 197, 486 S.E.2d at 821.

7. *Id.*

8. *Smith v. State*, 222 Ga. App. 412, 413, 474 S.E.2d 291, 292 (1996), *rev'd* 268 Ga. 196, 201, 486 S.E.2d 819, 823-24 (1997).

9. 268 Ga. at 197, 486 S.E.2d at 821.

10. *Id.*

11. The first requested jury charge stated:

Expert testimony regarding the battered woman's syndrome *authorizes a jury to find* that, notwithstanding any lapse of time since the husband's last assault, the defendant honestly was trying to defend herself although her husband was not at the moment physically attacking her.

The second requested jury charge stated: You are authorized to consider the testimony of an expert witness as to whether or not the defendant suffered from the battered woman syndrome to assist you in evaluating her defense [of] self-defense. In this regard, you may consider the testimony of an expert witness on the battered woman syndrome to help explain why a person suffering from the battered woman syndrome would not leave her mate, would not inform the police, family or friends of her mate's abusive treatment and would fear aggression against herself.

The third requested jury charge stated: Expert testimony regarding the battered woman syndrome *authorizes a jury to find* that the defendant honestly believed her life was in imminent danger and that her husband was going to kill her.

Id. at 203-04, 486 S.E.2d at 825-26 (Carley, J., dissenting).

12. 268 Ga. at 197, 486 S.E.2d at 821.

13. *Id.*

14. *Id.*

The jury was charged that a person is justified in using force against another person "when and to the extent that she reasonably believes that such . . . force is necessary to defend herself or a third person against the other's imminent use of unlawful force; [and that] a person is justified in using force which is intended

trial court because it was bound by precedent, recognized that this decision would not be universally embraced.¹⁵ It noted the problems with a standard jury charge:

[T]he standard charge on justification cannot adequately permit a jury to consider a properly asserted defense of battered person syndrome because such a charge instructs that the accused must reasonably believe that the force used was necessary to protect herself from *imminent* bodily harm while the battered person syndrome defense can turn on the fact that the accused has become so deeply troubled that she cannot objectively determine whether harm is "*imminent*."¹⁶

The Georgia Supreme Court granted certiorari to determine if and when a defendant is entitled to a separate charge on battered person syndrome.¹⁷ Because the evidence established that defendant suffered from battered person syndrome, the Georgia Supreme Court held defendant was entitled to a requested jury charge to explain the relevancy of this evidence as it related to the *reasonableness* of defendant's belief that she needed to use deadly force immediately to defend herself against her husband.¹⁸ The court held that this ruling applies to all cases in "the pipeline" and reversed the court of appeals.¹⁹

II. LEGAL BACKGROUND

Traditionally, under the Georgia Code of 1933, justification by a claim of self defense was only available when defendants could show that a reasonable person would fear imminent great bodily harm or death.²⁰

or likely to cause death or great bodily harm only if that person reasonably believes that such force is necessary to prevent death or great bodily injury to herself or a third person or to prevent the commission of a forcible felony." As for self-defense, the jury was instructed that "a defendant is justified to kill or use force against another person in defense of self or others," and that the "standard is whether the circumstances were such that they would excite not merely the fears of the defendant, but the fears of a reasonable person."

Id. at 197-98, 486 S.E.2d at 821 (citing O.C.G.A. § 16-3-21(a) (1996)).

15. 222 Ga. App. at 413, 474 S.E.2d at 293.

16. *Id.* (emphases added) (citing *Chester v. State*, 267 Ga. 9, 16-17, 471 S.E.2d 836, 840-41 (1996) (Sears, J., concurring specially)).

17. 268 Ga. at 196, 486 S.E.2d at 820.

18. *Id.* at 201, 486 S.E.2d at 823-24.

19. *Id.*

20. The Georgia Code of 1933 section 26-1012 stated the reasonableness standard for justifiable homicide as:

A bare fear of any of those offenses, to prevent which the homicide is alleged to have been committed, shall not be sufficient to justify the killing. It must appear

Defendants' particular characteristics were not taken into consideration when determining if their actions were reasonable.²¹ This criteria was used in 1946, when the Georgia Supreme Court held in *Bivins v. State*²² that the fears of a defendant that justify a homicide must be the fears of a reasonable person.²³ Furthermore, the court held that if the defendant was an unusually timid person, or lacked courage, and committed the homicide under circumstances that would not have created fears in a reasonable person, then the defendant was not justified.²⁴ The standard during this era was to use a completely objective analysis of the defendant's actions. The courts would not consider any subjective, personal characteristics of a defendant.

In 1968 the Criminal Code of Georgia was enacted.²⁵ The legislature enacted section 26-902 to establish what constitutes justifiable homicide.²⁶ The committee notes to chapter 26-9 stated that one of the purposes of the code is to recodify the reasonable belief test.²⁷ However, the courts did not construe any difference in the standard for reasonableness after this enactment.²⁸

In 1972 juries were still not allowed to consider the actual fears of a defendant.²⁹ In *Moore v. State*,³⁰ defendant appealed the trial court decision to refuse a jury charge that excused defendant's actions if he

that the circumstances were sufficient to excite the fears of a reasonable man, and that the party killing really acted under the influence of those fears, and not in a spirit of revenge.

GA. CODE § 26-1012 (Harrison 1933).

21. 268 Ga. at 198, 486 S.E.2d at 821 (citing *Bivins v. State*, 200 Ga. 729, 38 S.E.2d 273 (1946)).

22. 200 Ga. 729, 38 S.E.2d 273 (1946).

23. *Id.* at 733, 38 S.E.2d at 276.

24. *Id.*

25. Currently codified at O.C.G.A. §§ 16-1-1 to 16-16-2 (1996 & Supp. 1997).

26. GA. CODE ANN. § 26-902 (Harrison 1968). This section was enacted in 1968; however, it did not take effect until 1969. Section 26-902 states in part:

(a) A person is justified in threatening or using force against another when and to the extent that he reasonably believes that such threat or force is necessary to defend himself or a third person against such other's imminent use of unlawful force; however, a person is justified in using force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent death or great bodily injury to himself or a third person or to prevent the commission of a forcible felony.

GA. CODE ANN. § 26-902 (1968) (current version codified at O.C.G.A. § 16-3-21 (1996)) (extends reasonableness to include defendant's particular circumstances).

27. GA. CODE ANN. Ch. 26-9 Comm. notes (1968).

28. *Moore v. State*, 228 Ga. 662, 666, 187 S.E.2d 277, 279-80 (1972).

29. *Id.* at 666, 187 S.E.2d at 279.

30. 228 Ga. 662, 187 S.E.2d 277 (1972).

reasonably believed the shooting was necessary to protect himself.³¹ The Georgia Supreme Court upheld the trial court decision to charge the jury on the fears of a reasonable man, not the fears of the defendant.³²

By 1981 the trend in Georgia was changing. In *Daniels v. State*,³³ the Georgia Supreme Court for the first time acknowledged a difference in the new formulation of the Criminal Code by ruling in favor of the defendant.³⁴ In *Daniels* the defendant had previously been attacked with a knife and received scars to his chest.³⁵ The court held that evidence of this previous attack was relevant to whether *he* reasonably believed that deadly force was necessary to defend himself.³⁶ "The defendant should be allowed to prove the crimes previously committed against him to show his intent and motive in defending himself."³⁷ The court further noted that in "cases of doubt, the testimony should be admitted."³⁸ The court was making a change towards a subjective view of reasonableness by considering the personal, past experiences of the defendant. Previously the court would only look at how society in general would have reacted in the particular situation.

Another change occurred in 1981 when the Georgia Supreme Court recognized "the battered woman syndrome as a scientifically established theory."³⁹ In *Smith v. State*,⁴⁰ the supreme court held expert opinion on battered person syndrome is admissible to aid the jury in evaluating the battered woman's defense of self-defense.⁴¹ The court stated that even when the expert opinion is on the ultimate issues to be decided by a jury, the testimony is admissible when the jurors would not ordinarily be able to draw conclusions for themselves.⁴² Furthermore, "the expert's testimony explaining why a person suffering from battered woman's syndrome would not leave her mate, would not inform police or friends, and would fear increased aggression against herself, would be

31. *Id.* at 662, 187 S.E.2d at 277.

32. *Id.*

33. 248 Ga. 591, 285 S.E.2d 516 (1981).

34. *Id.* at 592-93, 285 S.E.2d at 518.

35. *Id.* at 593, 285 S.E.2d at 518.

36. *Id.*

37. *Id.*

38. *Id.* (quoting *Milton v. State*, 245 Ga. 20, 26, 262 S.E.2d 789, 794 (1980)).

39. 268 Ga. at 198, 486 S.E.2d at 821-22 (citing *Smith v. State*, 247 Ga. 612, 619, 277 S.E.2d 678, 683 (1981)).

40. 247 Ga. 612, 277 S.E.2d 678 (1981).

41. *Id.* at 619, 277 S.E.2d at 683.

42. *Id.*

such conclusions that jurors could not ordinarily draw for themselves.⁴³

Toward the end of the decade, the court increased the level of subjectivity in battered person syndrome cases by relaxing the imminent danger requirement. In 1989 the Georgia Supreme Court in *Chapman v. State*⁴⁴ held that self-defense could be found even if the "actual threat of harm does not immediately precede the homicide."⁴⁵ In *Chapman* the husband repeatedly beat defendant, and two days before his death, he attacked defendant and threatened to kill her. On the day of the shooting, defendant closed her bank account, bought a pistol and bullets from two separate stores, loaded the gun, and picked up her husband from work. The husband became angry, beat her again, and went into the bathroom. While the husband was in the shower, defendant went to the car, found the gun, and shot the husband at least three times.⁴⁶ Although defendant in *Chapman* lost because it was held that the trial court gave a fair charge on the justification defense, the court reiterated that evidence of past physical abuse is relevant to show the necessary mental state needed for the defense of justification.⁴⁷

The legislature became involved again in 1993 when it added new subsection (d) to O.C.G.A. section 16-3-21.⁴⁸ This subsection provides that, if a defendant raises a defense of justification in a case of murder or manslaughter "in order to establish the defendant's reasonable belief that the use of force or deadly force was immediately necessary,"⁴⁹ the defendant may offer the following:

- (1) Relevant evidence that the defendant had been the victim of acts of family violence or child abuse committed by the deceased . . . and (2) Relevant expert testimony regarding the condition of the mind of the defendant at the time of the offense, including those relevant facts and circumstances relating to the family violence or child abuse that are the bases of the expert's opinion.⁵⁰

This new subsection provided a new standard for the Georgia courts to allow evidence of past abuse and to look into the mind of a defendant when deciding if the fear of danger was both imminent and reasonable.

43. *Id.*

44. 259 Ga. 706, 386 S.E.2d 129 (1989).

45. *Id.* at 708, 386 S.E.2d at 131.

46. *Id.* at 706, 386 S.E.2d at 130-31.

47. *Id.* at 708, 386 S.E.2d at 131.

48. O.C.G.A. § 16-3-21(d) (1996).

49. *Id.*

50. *Id.*

It gave defendants with past family violence a way to illustrate that their belief of imminent danger was in fact reasonable under their particular circumstances. This subsection codified the law that was slowly being developed by Georgia courts. It took from 1933 to 1993 to establish a change from an objective view to a subjective view of a defendant's "reasonableness."

III. RATIONALE OF THE COURT

The Georgia Supreme Court granted certiorari in *Smith v. State* to decide whether a defendant is entitled to a jury charge on the battered person syndrome.⁵¹ The court held that "when a battered person syndrome self-defense claim has been properly established, the court should give specific jury instructions on justification by self-defense which are tailored to explain how the defendant's experiences as a battered person affected that defendant's state of mind at the time of the killing."⁵² At trial and on appeal, defendant's three requested jury instructions were not rejected because they were argumentative; they were rejected because of precedent disallowing separate jury instructions.⁵³ The jury was charged in accordance with O.C.G.A. section 16-3-21(a), not with the new subsection (d) enacted in 1993.⁵⁴

The Georgia Supreme Court overruled both the trial court and the court of appeals, and it interpreted the statute to mandate that a defendant is entitled to a jury charge explaining the relevance of the battered woman defense, especially if it is the sole defense.⁵⁵ Therefore, specific instructions on the battered woman syndrome are appropriate when they are both warranted by the evidence and requested by the defendant.⁵⁶ Under the present subsection (a) pattern jury instructions, the jury is directed to apply a reasonable person standard in determining self-defense. And, under this standard, the circumstances surrounding the homicide must be the type that would excite not only the fears of the defendant but also the fears of a reasonable person.⁵⁷

However, the supreme court noted there is a problem with this standard. Because the issue in a battered person defense is concerned

51. 268 Ga. at 196, 486 S.E.2d at 820.

52. *Id.* at 200, 486 S.E.2d at 823.

53. *Id.* at 197 n.1, 486 S.E.2d at 821 n.1.

54. *Id.* at 197, 486 S.E.2d at 821.

55. *Id.* at 200-01, 486 S.E.2d at 823-24.

56. *Id.* at 200, 486 S.E.2d at 823.

57. *Id.* at 200-01, 486 S.E.2d at 823.

with the circumstances as the defendant perceived them and not with whether the danger was in reality immediate and imminent, the focus must be on the defendant's actual beliefs.⁵⁸ And under a standard that does not take into account the reasonableness of a defendant's actual beliefs, the defendant is not getting the benefit of the new subsection (d) established by the legislature. Modification of the justification by self-defense charge is therefore necessary both to comply with O.C.G.A. section 16-3-21(d) and "to permit juries to consider the reasonableness of the defendant's belief that the use of force was necessary in light of both the circumstances at the time defendant used force, and any psychological condition resulting from such circumstances."⁵⁹

The Georgia Supreme Court took the opportunity in *Smith* to create the new rule that "when a battered person syndrome self-defense claim has been properly established, the court should give specific jury instructions on justification by self-defense which are tailored to explain how the defendant's experiences as a battered person affected that defendant's state of mind at the time of the killing."⁶⁰ The court now requires that modified jury instructions on self-defense be given in all battered person syndrome cases when they are authorized by the evidence and requested by the defendant in order to aid the jury in evaluating the effect of the battered person's defense.⁶¹ This rule will be applied in all cases that are currently on direct review in which a judgment has not yet been rendered.⁶²

The dissent in *Smith* did not dispute the general rule set out by the majority.⁶³ It agreed with the general principle that trial courts should give jury charges on the battered woman syndrome and with the language proposed for these charges.⁶⁴ The dissent's only disagreement

58. *Id.* at 200, 486 S.E.2d at 823.

59. *Id.* (quoting *Chester v. State*, 267 Ga. 9, 17, 471 S.E.2d 836, 842 (1996) (Sears, J., concurring specially)).

60. *Id.*

61. *Id.*

62. *Id.* at 201, 486 S.E.2d at 823.

63. *Id.*, 486 S.E.2d at 824 (Carley, J., dissenting).

64. *Id.* The following language proposed is:

I charge you that the evidence that the defendant suffers from battered person syndrome was admitted for your consideration in connection with the defendant's claim of self-defense and that such evidence relates to the issue of the reasonableness of the defendant's belief that the use of force was immediately necessary, even though no use of force against the defendant may have been, in fact, imminent. The standard is whether the circumstances were such as would excite the fears of a reasonable person possessing the same or similar psychological and physical characteristics as the defendant, and faced with the same circumstances surrounding the defendant at the time the defendant used force.

was in regard to this particular case. Specifically, the dissent thought that defendant did not make a proper request for jury charges and that defendant's proposed charges were too argumentative.⁶⁵ However, even the trial court and court of appeals believed that the proposed charges were acceptable.⁶⁶

IV. IMPLICATIONS

The holding in *Smith v. State* enhances the impact in a homicide case of the battered person syndrome defense. While battered person syndrome has been a defense for many years, there has been a roadblock that barred defendants from helping juries weigh and consider their proposed defense. As a result of *Smith v. State*, defendants will have more control over the jury deliberation because juries will be instructed on the battered person's frame of mind. However, the decision in this case will likely remain a narrow holding. The court, in an effort to treat a "unique and almost mysterious area of human response and behavior,"⁶⁷ will probably only allow separate jury charges relating to the state of a defendant's mind in battered person syndrome cases, not in other murder cases. The reason is that society has become more accepting of this defense, which will continue to develop as a sound area of law. Although prosecutors have called it an "absolute about face,"⁶⁸ the decision was not a radical one. Compare the changes in the pattern or proposed jury instructions. The old instruction given in all justification cases is as follows: "[The] standard is whether the circumstances were such that they would excite not merely the fears of the defendant, but the fears of a reasonable person."⁶⁹ The new proposed instruction to be given in battered person syndrome cases is as follows: "The standard is whether the circumstances were such as would excite the fears of a reasonable person possessing the same or similar psychological and physical characteristics as the defendant, and faced with the same circumstances surrounding the defendant at the time the defendant used force."⁷⁰ The key difference is simple. In battered person syndrome cases, the focus is on the reasonableness of the beliefs of that particular

Id. at 200-01, 486 S.E.2d at 823.

65. *Id.* at 203-05, 486 S.E.2d at 825-26 (Carley, J., dissenting).

66. *Id.* at 197 n.1, 486 S.E.2d at 821 n.1.

67. *Sinns v. State*, 248 Ga. 385, 387, 283 S.E.2d 479, 481 (1981).

68. Jonathan Ringel, *Defense Wins Jury Instruction on Abuse as Justification to Kill*, FULTON COUNTY DAILY REP., July 15, 1997.

69. 268 Ga. at 197-98, 486 S.E.2d at 821 (citing O.C.G.A. § 16-3-21(a)(1996)).

70. *Id.* at 200-01, 486 S.E.2d at 823.

defendant. However, in all other justification cases, the reasonableness of a defendant's action will be judged by an objective standard.

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